FILE COPY

No. 19

# In the Supreme Court of the United States

OCTOBER TERM, 1931

LEITUS N. CROCKER, AS DEPUTY COMMISSIONER FOR THE SEVENTH COMPENSATION DISTRICT OF THE UNITED STATES EMPLOYEES' COMPENSATION COMMISSION, PETITIONER

v.

CHARLES BERSON

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE PETITIONER

# INDEX


| | Page |
|---|---|
| Opinions below | 1 |
| Jurisdiction | 2 |
| Question presented | 2 |
| Constitutional and statutory provisions involved | 2 |
| Statement | 5 |
| Specification of errors | 7 |
| Summary of argument | 7 |
| Argument: | |
| I. Preliminary statement | 15 |
| II. The statute does not require or authorize a trial *de novo* | 21 |
| III. The statute as so construed is constitutional | 26 |
| A. It does not violate the due process clause of the Fifth Amendment | 26 |
| B. It is not contrary to the grant of judicial power in Article III | 45 |
| Conclusion | 49 |
| Appendix—Opinion in *Helfrick* v. *Dahlstrom Metallic Door Co.*, 256 N. Y. 199 | 52 |


## CITATIONS


| Cases: | |
|---|---|
| *Adams' Case*, 124 Maine 295 | 42 |
| *American Savings Bank & Trust Co.* v. *Burnet*, 45 F. (2d) 548 | 22 |
| *Avery* v. *Commissioner*, 22 F. (2d) 6 | 22 |
| *Bates & Guild Co.* v. *Payne*, 194 U. S. 106 | 30 |
| *Bedell* v. *Commissioner*, 30 F. (2d) 622 | 22 |
| *Bischoff* v. *American Car & Foundry Co.*, 190 Mich. 229 | 42 |
| *Blankenship* v. *Industrial Comm.*, 34 Ariz. 2 | 42 |
| *Bluefield Co.* v. *Public Service Commission*, 262 U. S. 679 | 33 |
| *Booth Fisheries Co.* v. *Industrial Commission of Wisconsin*, 271 U. S. 208 | 20, 42 |
| *Burfenning* v. *Chicago, St. Paul, etc., Ry.*, 163 U. S. 321 | 31 |
| *Campbell* v. *Eagle & Blue Bell Mining Co.*, 64 Utah 430 | 42 |
| *Choctaw Portland Cement Co.* v. *Lamb*, 79 Okla. 109 | 42 |
| *Columbia School Supply Co.* v. *Lewis*, 65 Ind. App. 339 | 42 |
| *Employers' Mutual Ins. Co.* v. *Industrial Comm.*, 65 Colo. 283 | 42 |

Cases—Continued. Page

*Federal Trade Commission* v. *Curtis Publishing Co.*, 260 U. S. 568 ..... 29, 35
*Fong Yue Ting* v. *United States*, 149 U. S. 698 ..... 31
*Grant Smith-Porter Ship Co.* v. *Rohde*, 257 U. S. 469 ..... 46
*Grays Harbor Stevedore Co.* v. *Marshall*, 36 F. (2d) 814 ..... 41
*Hawkins* v. *Bleakly*, 243 U. S. 210 ..... 15
*Hazard Blue Grass Coal Corp.* v. *Clemens*, 209 Ky. 486 ..... 42
*Heitz, Matter of*, v. *Ruppert*, 218 N. Y. 148 ..... 42
*Helfrick* v. *Dahlstrom Metallic Door Co.*, 256 U. S. 199 ..... 13, 42, 44, 52
*Houston* v. *St. Louis Independent Packing Co.*, 249 U. S. 479 ..... 31
*Howard* v. *Monahan*, 31 F. (2d) 480, 33 F. (2d) 220 ..... 41
*International Shoe Co.* v. *Federal Trade Commission*, 280 U. S. 291 ..... 30
*International Stevedoring Co.* v. *Haverly*, 272 U. S. 50 ..... 46
*Interstate Commerce Commission* v. *Delaware Railroad*, 220 U. S. 235 ..... 30
*Interstate Commerce Commission* v. *Louisville & Nashville R. R. Co.*, 227 U. S. 892 ..... 30
*Interstate Commerce Commission* v. *Union Pacific Railroad*, 222 U. S. 541 ..... 30
*Jamison* v. *Encarnacion*, 281 U. S. 635 ..... 47
*Jarka Corporation* v. *Monahan*, 48 F. (2d) 283 ..... 41
*Jenkins* v. *Boise Fayette Lumber Co.* 49 Idaho 24 ..... 42
*Johnson* v. *Drew*, 171 U. S. 93 ..... 31
*Joyce* v. *Deputy Commissioner*, 33 F. (2d) 218 ..... 41
*Keyway Stevedoring Co.* v. *Clark*, 43 F. (2d) 983 ..... 41
*Knickerbocker Ice Co.* v. *Stewart*, 253 U. S. 149 ..... 16, 47
*Lehigh Valley R. R.* v. *Commissioners*, 278 U. S. 24 ..... 33
*Leisy* v. *Hardin*, 135 U. S. 100 ..... 16
*Lem Moon Sing* v. *United States*, 158 U. S. 538 ..... 31
*Liu Hop Fong* v. *United States*, 209 U. S. 453 ..... 33
*Long Island Water Supply Co.* v. *Brooklyn*, 166 U. S. 685 ..... 27
*Lottawanna, The*, 21 Wall. 558 ..... 47
*Lower Vein Coal Co.* v. *Industrial Board*, 255 U. S. 144 ..... 15
*Madera Sugar Pine Co.* v. *Industrial Commission*, 262 U. S. 499 ..... 15
*Ma-King Co.* v. *Blair*, 271 U. S. 479 ..... 22, 31
*McCahan Company* v. *Norton, Deputy Commissioner*, 43 F. (2d) 505 ..... 41
*McCarty* v. *General Electric Co.*, 293 Pa. 448 ..... 42
*Medbury* v. *United States*, 173 U. S. 492 ..... 31
*Merchants' & Miners' Transp. Co.* v. *Norton*, 32 F. (2d) 513 ..... 41
*Messel* v. *Foundation Co.*, 274 U. S. 427 ..... 46
*Middleton* v. *Texas Power & Light Co.*, 249 U. S. 152 ..... 15
*Millers' Indemnity Underwriters* v. *Braud*, 270 U. S. 469 ..... 46
*Montgomery* v. *Maryland Casualty Co.*, 169 Ga. 746 ..... 42
*Mountain Timber Co.* v. *Washington*, 243 U. S. 219 ..... 15

Cases—Continued. Page

*Nega* v. *Chicago Railways Co.*, 317 Ill. 483 ..... 13, 42, 43
*New Jersey Fid. Ins. Co.* v. *Patterson*, 86 Colo. 580 ..... 42
*New York Central Railroad Co.* v. *White*, 243 U. S. 188 .. 12, 15, 20, 40
*Ng Fung Ho* v. *White*, 259 U. S. 276 ..... 11, 33, 38
*Nichols* v. *Commissioner*, 44 F. (2d) 157 ..... 22
*Nishimura Ekiu* v. *United States*, 142 U. S. 651 ..... 31
*Northwestern Stevedoring Co.* v. *Marshall, Deputy Commissioner*, 41 F. (2d) 28 ..... 41
*Obrecht-Lynch Corp.* v. *Clark*, 30 F. (2d) 144 ..... 41
*Ohio Valley Water Co.* v. *Ben Avon Borough*, 253 U. S. 287 ..... 11, 13, 33, 40, 43
*Old Colony Trust Co.* v. *Commissioner*, 279 U. S. 716 ..... 22, 32
*Panama Railroad Co.* v. *Vasquez*, 271 U. S. 557 ..... 46
*Passavant* v. *United States*, 148 U. S. 214 ..... 31
*Phillips* v. *Commissioner*, 283 U. S. 589 ..... 22, 28, 32, 35
*Pierce* v. *Barker*, 274 U. S. 718 ..... 20
*Pocahontas Fuel Co.* v. *Monahan*, 34 F. (2d) 549 ..... 41
*Prentis* v. *Atlantic Coast Line*, 211 U. S. 210 ..... 35
*Public Clearing House* v. *Coyne*, 194 U. S. 497 ..... 30
*Quon Quon Poy* v. *Johnson*, 273 U. S. 352 ..... 31
*Rahrer, In re*, 140 U. S. 545 ..... 16
*Reetz* v. *Michigan*, 188 U. S. 505 ..... 27
*Showers* v. *Crowell*, 46 F. (2d) 361 ..... 41
*Silberschein* v. *United States*, 266 U. S. 221 ..... 31
*Simmons' Case*, 117 Main 175 ..... 42
*Smelting Co.* v. *Kemp*, 104 U. S. 636 ..... 31
*Southern Pacific Co.* v. *Jensen*, 244 U. S. 205 ..... 8, 16, 47
*Southwestern Surety Ins. Co.* v. *Pillsbury*, 172 Cal. 768 ..... 42
*Star Publishing Co.* v. *Johnson*, 83 Ind. App. 309 ..... 42
*Steamboat Co.* v. *Chase*, 16 Wall. 522 ..... 14, 47
*Tagg Bros. & Moorehead* v. *United States*, 280 U. S. 420 ... 31, 35
*Todd Dry Docks, Inc.* v. *Marshall*, 49 F. (2d) 621 ..... 41
*United States* v. *Ju Toy*, 198 U. S. 253 ..... 31
*United States* v. *Williams*, 278 U. S. 255 ..... 31, 35
*Virginian Railway* v. *United States*, 272 U. S. 658 ..... 30, 35
*Washington* v. *Dawson & Co.*, 264 U. S. 219 ..... 15, 16, 17, 47
*Weimer* v. *Bunbury*, 30 Mich. 201 ..... 27
*Western Papermakers Chemical Co.* v. *United States*, 271 U. S. 268 ..... 30
*Wheeling Corrugating Co.* v. *McManigal, Deputy Commissioner*, 41 F. (2d) 593 ..... 41
*Williams* v. *Thompson*, 200 N. C. 463 ..... 42
*Williamsport Wire Rope Co.* v. *United States*, 277 U. S. 551 .. 31
*Wilson & Co.* v. *Locke*, 50 F. (2d) 81 ..... 41

Constitution:
Article III ..... 45
Fifth Amendment ..... 2

Statutes:


| | Page |
|---|---|
| Act of September 24, 1789, 1 Stat. 73, 76–77— | |
| Sec. 9 | 47 |
| Act of May 17, 1928, c. 612, 45 Stat. 600 | 18 |
| Act of July 1, 1930, c. 788, 46 Stat. 844 (U. S. C. Sup. IV, Title 47, Sec. 96) | 29 |
| Act of February 25, 1931, c. 302, 47 Stat. 1419 | 34 |
| Clayton Act (Act of Oct. 15, 1914, c. 323, 38 Stat. 730; U. S. C., Title 15, Sec. 21)— | |
| Sec. 11 | 28 |
| Federal Trade Commission Act (Act of September 26, 1914, c. 311, 38 Stat. 717; U. S. C., Title 15, Sec. 14)— | |
| Sec. 5 | 28 |
| Judicial Code (U. S. C., Title 28, Secs. 41(3), 371)— | |
| Sec. 24(3) | 47 |
| Sec. 256 | 47 |
| Longshoremen's and Harbor Workers' Compensation Act (Act of March 4, 1927, c. 509, 44 Stat. 1424; U. S. C. Sup. IV, Title 33, Secs. 901–950)— | |
| Sec. 21 | 2, 3, 8, 21 |
| Revenue Act of 1926, c. 27, 44 Stat. 9— | |
| Sec. 1003 (b) | 21 |
| Tariff Act of 1922, c. 356, 42 Stat. 858, 944 (U. S. C., Title 19, Sec. 176)— | |
| Sec. 316 (c) | 29 |
| Tariff Act of 1930, c. 497, 46 Stat. 590, 704 (U. S. C. Supp. IV, Title 19, Sec. 1337 (c))— | |
| Sec. 337 (c) | 29 |


Miscellaneous:


| | |
|---|---|
| Dickinson, Administrative Justice and the Supremacy of Law (1927), pp. 39–75 | 34 |
| Frankfurter, *The Task of Administrative Law* (1927), 75 U. of Pa. L. Rev. 614, 619–620 | 34 |
| House Report, No. 1190, 69th Cong., 1st Sess., p. 2 | 17 |
| Report of United States Employees' Compensation Commission, fiscal years ending July 1, 1928, 1929 and 1930 | 49 |

# In the Supreme Court of the United States

OCTOBER TERM, 1931

No. 19

LETUS N. CROWELL, AS DEPUTY COMMISSIONER FOR the Seventh Compensation District of the United States Employees' Compensation Commission, petitioner

*v.*

CHARLES BENSON

*ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT*

## BRIEF FOR THE PETITIONER

### OPINIONS BELOW

The opinion of the District Court (R. 18–25) is reported in 33 F. (2d) 137. A supplemental opinion of the District Court which does not appear in the Record is reported in 38 F. (2d) 306. The opinion of the Circuit Court of Appeals (R. 185–190) is reported in 45 F. (2d) 66.

## JURISDICTION

The judgment of the Circuit Court of Appeals was entered on November 17, 1930. (R. 190–191.) The petition for a writ of certiorari was filed February 12, 1931, and certiorari was granted March 16, 1931. (R. 191.) The jurisdiction of this Court rests on Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925.

## QUESTION PRESENTED

Whether, in a suit brought in a United States District Court under Section 21 of the Longshoremen's and Harbor Workers' Compensation Act to set aside an award made by a deputy commissioner, there is a right of trial *de novo* of the issues of fact determined by the deputy commissioner.

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fifth Amendment to the Constitution provides in part as follows:

> No person shall * * * be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

In order to show its comprehensive nature and for the convenience of the Court, the Longshoremen's and Harbor Workers' Compensation Act (Act of March 4, 1927), c. 509, 44 Stat. 1424 (U. S. C. Sup. IV, Title 33, Secs. 901–950), is included in full in the pocket at the end of this brief.

Section 21 of this Act, which is the section particularly involved in the present case, provides as follows:

> SEC. 21. (a) A compensation order shall become effective when filed in the office of the deputy commissioner as provided in section 19, and, unless proceedings for the suspension or setting aside of such order are instituted as provided in subdivision (b) of this section, shall become final at the expiration of the thirtieth day thereafter.
>
> (b) If not in accordance with law, a compensation order may be suspended or set aside, in whole or in part, through injunction proceedings, mandatory or otherwise, brought by any party in interest against the deputy commissioner making the order, and instituted in the Federal district court for the judicial district in which the injury occurred (or in the Supreme Court of the District of Columbia if the injury occurred in the District). The orders, writs, and processes of the court in such proceedings may run, be served, and be returnable anywhere in the United States. The payment of the amounts required by an award shall not be stayed pending final decision in any such proceeding unless upon application for an interlocutory injunction the court, on hearing, after not less than three days' notice to the parties in interest and the deputy commissioner, allows the stay of such payments, in whole or in part, where irreparable dam-

age would otherwise ensue to the employer. The order of the court allowing any such stay shall contain a specific finding, based upon evidence submitted to the court and identified by reference thereto, that such irreparable damage would result to the employer, and specifying the nature of the damage.

(c) If any employer or his officers or agents fails to comply with a compensation order making an award, that has become final, any beneficiary of such award or the deputy commissioner making the order, may apply for the enforcement of the order to the Federal district court for the judicial district in which the injury occurred (or to the Supreme Court of the District of Columbia if the injury occurred in the District). If the court determines that the order was made and served in accordance with law, and that such employer or his officers or agents have failed to comply therewith, the court shall enforce obedience to the order by writ of injunction or by other proper process, mandatory or otherwise, to enjoin upon such person and his officers and agents compliance with the order.

(d) Proceedings for suspending, setting aside, or enforcing a compensation order, whether rejecting a claim or making an award, shall not be instituted otherwise than as provided in this section and section 18.

STATEMENT

This suit was brought in the United States District Court for the Southern District of Alabama by Charles Benson, the owner of a barge, under Section 21 (b) of the Longshoremen's and Harbor Workers' Compensation Act, to set aside an award made by the deputy commissioner of the United States Employees' Compensation Commission in favor of J. B. Knudsen, who was injured on the barge.

The claimant, Knudsen, while working on the barge which was moored in the navigable waters of the Mobile River, was seriously injured by certain tackle giving away. (R. 1.) Knudsen filed a claim for compensation before the deputy commissioner under authority of the Longshoremen's and Harbor Workers' Compensation Act. (R. 4.) Benson filed an answer denying the relationship of employer and employee at the time of the injury and denying liability for the payment of compensation. (R. 6.) At the hearing before the deputy commissioner Knudsen testified that he was employed by Benson and that while under such employment the injuries were sustained (R. 122–126, 131); and other testimony on his behalf was to the same effect. (R. 100–113, 135.) The evidence of Benson and other witnesses on his behalf was to the effect that Knudsen was not in the employ of Benson at the time the injuries were sustained. (R. 153–167.)

76609—31——2

After a full hearing on the merits before the deputy commissioner, at which both sides were represented, and witnesses were produced and examined by each side (R. 100–176), the deputy commissioner made findings of fact sustaining the contention of Knudsen that he was in the employ of Benson at the time of the accident (R. 83), and made an award in favor of the injured employee (R. 84).

Benson then filed a bill in equity in the United States District Court under Section 21 (b) of the Act, seeking to have the award set aside on the ground that it was not in accordance with law, in that Knudsen was not in his employ at the time of the injury. (R. 1–4.) The District Judge transferred the suit to the admiralty side of the court (R. 26), and after holding a trial *de novo* (R. 28–83), entered a decree setting aside the award of the deputy commissioner and permanently enjoining its enforcement (R. 176). There was filed in evidence the record made before the deputy commissioner, but this was not considered by the District Judge (R. 176), who upon the evidence taken *de novo* found, contrary to the finding of the deputy commissioner, that Knudsen was not in the employ of Benson (R. 177).

The District Court held that unless the statute provided for a trial *de novo* the "act was beyond the power of Congress and is void" (R. 23), and that in order to hold the Act constitutional and not in

violation of Article III, Section 2 of the Constitution, and of the Fifth Amendment, it must follow that the District Court may disregard entirely the proceedings before the deputy commissioner and hear the case as upon an original proceeding or as a trial *de novo* (R. 20, 25).

The Circuit Court of Appeals held that there was a right of trial *de novo* in the District Court on the admiralty side and that there was evidence taken *de novo* before the District Court which supported that court's finding that the injured claimant was not in the employ of the barge owner when his injuries were sustained. Accordingly, it affirmed the rulings of the District Court. (R. 185–191.)

## SPECIFICATION OF ERRORS

The Circuit Court of Appeals erred—

I. In holding there was a right of a trial *de novo* in the District Court and that the Act was unconstitutional unless there was that right.

II. In holding that the injunction proceeding authorized by the Act should be heard in admiralty rather than in equity.

## SUMMARY OF ARGUMENT

### I

In the second decade of the present century workmen's compensation laws were generally adopted by the States, and this Court in numerous decisions sustained their validity. But very shortly after

the adoption of these State compensation laws it developed that they could not be applied to injuries which occurred within the admiralty jurisdiction of the United States. *Southern Pacific Co. v. Jensen*, 244 U. S. 205. Accordingly, Congress passed the Longshoremen's and Harbor Workers' Compensation Act, designed to extend the benefits of compensation to workmen in maritime industries.

The present case concerns the validity of a provision in the Longshoremen's and Harbor Workers' Compensation Act which provides for prompt administrative determination and allowance of compensation subject to review in the courts on question of law only. Unless this provision is valid, the time required for the final determination of the average compensation award will be greatly increased and the Act will have fallen far short of its mark.

## II

Section 21 of the Longshoremen's and Harbor Workers' Compensation Act provides that an award may be suspended or set aside "if not in accordance with law." The language of this provision was adopted from Section 1003 (b) of the Revenue Act of 1926, relating to review of the decisions of the Board of Tax Appeals by the Circuit Courts of Appeals. It is settled that under this provision the Board's determinations of fact, when supported by the evidence, are conclusive. There is

no room for any other construction of the same words as they are used in the Longshoremen's and Harbor Workers' Compensation Act. Although we believe that this alone is sufficient to make the proper construction of the phrase "if not in accordance with law" wholly free from doubt, there are numerous other considerations which dictate the same conclusion.

The statute provides in detail for an administrative trial resulting in a determination of fact and law and the making of a compensation order which may be reviewed in the District Court if it be not in accordance with law. Even in that event the court may only suspend or set aside the award, and there is no power in the court to enter a compensation order of its own. In this legislative scheme there can be no place for the trial of the issues *de novo*. Under the ruling of the court below the administrative provisions of the Act would become wholly ineffective.

## III

Section 21 of the Longshoremen's and Harbor Workers' Compensation Act is not contrary to any provision of the Constitution because it limits the District Court to a consideration of the findings made by the deputy commissioner on the evidence presented before him. The due process clause of the Fifth Amendment is fully satisfied by the provision for a hearing before an administrative tribunal and for a judicial review of the admin-

istrative determination if that determination is "not in accordance with law."

"Due process of law" does not require that all proceedings relating to liberty or property must be proceedings in a court. Numerous decisions of this Court sustain this conclusion.

Statutes frequently provide that administrative findings of fact if supported by testimony shall be conclusive. In many decisions of this Court statutes of this type have been applied and in other decisions findings of administrative bodies have been held conclusive even though the statutes involved did not explicitly so provide.

These decisions make it clear that there is nothing in the Constitution establishing a universal rule that there must be a trial *de novo* in the courts in all suits to set aside decisions made by administrative authorities. The order of compensation by a deputy commissioner under the Longshoremen's and Harbor Workers' Compensation Act and the finding of fact upon which the order is made are not different in substance from findings and orders made by the Federal Trade Commission, the Interstate Commerce Commission, or other administrative bodies. If there is substantial evidence to support the order, the findings of the deputy commissioner are conclusive. There is no contention here that the findings of the deputy commissioner do not find support in the evidence which was presented before him.

The court below relied on several decisions of this Court to support its conclusion that the Constitution required a trial *de novo* in the instant case. Among others *Ohio Valley Water Co.* v. *Ben Avon Borough,* 253 U. S. 287, and *Ng Fung Ho* v. *White,* 259 U. S. 276, were cited. We submit that none of these decisions requires the result reached in the instant case.

In the *Ohio Valley Water Co. case,* and in the cases which have followed it, this Court has determined that due process of law requires that there be afforded an opportunity for a judicial review both on the law and the facts of an order of a commission which is functioning in a legislative capacity. But it is, of course, clear that the *Ohio Valley Water Co. case* did not overrule the great mass of decisions arising in other fields of administrative activity in which it has been held that determinations of fact may be made conclusive when they are supported by the evidence. Many such decisions have been rendered by this Court since the decision of the *Ohio Valley Water Co. case.* In the present case the administrative proceedings were not legislative in character but were brought to determine a present liability based upon past facts and existing legislation. In such a case the administrative body acts in a *quasi*-judicial capacity, and under the numerous decisions of this Court its conclusions on the facts, when supported by the evidence, may properly be made conclusive.

In *Ng Fung Ho* v. *White, supra,* it was held that a person claiming to be a citizen, who had been ordered deported by the Secretary of Labor, was entitled to a judicial determination of his citizenship. We do not feel that this decision is in any way controlling in the present case. The question of citizenship was there regarded as a jurisdictional question. But here, we submit, there is no possible question of the jurisdiction of the deputy commissioner. Furthermore, the field in which the administrative action was taken in the *Ng Fung Ho case* is wholly different from that involved in the present case. The administrative action in the present case is in a field in which this Court and other courts have uniformly held that administrative determination of facts, when supported by evidence, may constitutionally be made conclusive. In *New York Central Railroad Co.* v. *White,* 243 U. S. 188, this Court upheld a State workmen's compensation law, although it contained provisions for the finality of administrative determinations of fact. This result is further supported by numerous Federal and State decisions in which the findings of fact of workmen's compensation commissions have been held conclusive.

The precise question involved in this case has been considered in many lower Federal Courts in cases arising under the Longshoremen's Act. In every case other than the instant case the contention which we now make has been sustained.

A great majority of the State workmen's compensation acts expressly provide that the adminis-

trative findings of fact made in proceedings under the Act shall be final. Apparently without a single exception such provisions have been held valid and constitutional by the State courts. The decisions reaching this result are too numerous to catalogue. For the most part the State courts have regarded the question as so clear as not to merit discussion and, indeed, it has generally been so regarded since the time of the earliest workmen's compensation laws. In at least two of the State cases arising under compulsory workmen's compensation laws the same argument as that advanced here (based on *Ohio Valley Water Co.* v. *Ben Avon Borough,* 253 U. S. 287) has been carefully considered and rejected. *Nega* v. *Chicago Railways Co.,* 317 Ill. 483; *Helfrick* v. *Dahlstrom Metallic Door Co.,* 256 N. Y. 199.

Both courts below found some basis for their conclusions in the fact that the cause of action arose within the admiralty jurisdiction of the United States. The Circuit Court of Appeals apparently based its conclusion that the deputy commissioner lacked authority to make conclusive findings of fact in part at least upon the contention (R. 187) that the admiralty jurisdiction "is vested exclusively in constitutional Federal courts." But there is no basis either in the Constitution or in the decisions of this Court for the contention that the Federal district courts sitting in admiralty are the only tribunals competent to consider compensation for injuries sustained on navigable waters. When the injury is such that it is a matter of merely local

concern, compensation may be had under the State compensation laws and the award may be made by the administrative tribunals created by the State. Seamen injured on navigable waters may recover under the Jones Act in actions at law commenced in the State Courts. It has long been established that when the remedy sought is *in personam,* even though the suit arise upon a maritime contract or is brought to recover for a maritime tort, "the party seeking redress may proceed by libel in the District Court, or he may, at his election, proceed in an action at law, either in the Circuit Court * * * or in a State court * * *." *Steamboat Co.* v. *Chase,* 16 Wall. 522, 533.

Undoubtedly Congress has power to alter the maritime law. It has done so in the Jones Act extending the Federal Employers' Liability Act to seamen, and more specifically it has done so in the Longshoremen's and Harbor Workers' Compensation Act, where, in the exercise of its power to alter the Maritime Law by statutes of general application it has provided that awards of compensation for injuries to longshoremen and harbor workers shall be made by administrative officers with review by the courts on questions of law only. There is no reason for denying the power of Congress to provide for administrative action in controversies which would otherwise come before admiralty courts, simply because the judicial power also extends to "all Cases of admiralty and maritime Jurisdiction." The correctness of this conclusion is

plainly indicated by the opinion of this Court in *Washington* v. *Dawson & Co.*, 264 U. S. 219, 227.

## ARGUMENT

### I

### PRELIMINARY STATEMENT

One of the chief problems in the field of industrial relations at the beginning of the present century was the question of the proper method of distributing the losses incident to the operation of modern industry. Dissatisfaction with the common law solution of the problem was widely felt. As a result, the coming of the second decade of the century saw the general adoption by the States of workmen's compensation laws. These laws provided for compensation to injured employees, irrespective of fault on the part of the employer, and without regard to the common law defenses of contributory negligence, assumption of risk, and the fellow servant rule.

Attacks on the constitutionality of these Acts were rejected by this Court. In *Hawkins* v. *Bleakly*, 243 U. S. 210, and *Middleton* v. *Texas Power & Light Co.*, 249 U. S. 152, this Court sustained the so-called "elective" statutes of Iowa and Texas. And in *New York Central Railroad Co.* v. *White*, 243 U. S. 188; *Mountain Timber Co.* v. *Washington*, 243 U. S. 219; *Lower Vein Coal Co.* v. *Industrial Board*, 255 U. S. 144; and *Madera Sugar Pine Co.* v. *Industrial Commission*, 262 U. S. 499, the compulsory compensation laws of New

York, Washington, Indiana, and California were held valid. Many States adopted similar statutes, thus recognizing the widespread demand for this method of distributing the loss attributable to industrial accidents. In general, these laws were comprehensive in their nature, applying with few exceptions to all workmen engaged in industry throughout the respective States.

But very shortly after the adoption of these State compensation laws it developed that there was a field of industry of considerable size to which they could not be applied. In *Southern Pacific Co.* v. *Jensen,* 244 U. S. 205, it was held that the provisions of the New York compensation law could not be applied to stevedores who had been killed on board a vessel in New York Harbor within the admiralty jurisdiction of the United States. Congress took the view that this decision depended only on the fact that Congress had not expressed its will that State workmen's compensation laws should apply within the admiralty jurisdiction (*cf. Leisy* v. *Hardin,* 135 U. S. 100, with *In re Rahrer,* 140 U. S. 545), and, accordingly, enacted a statute expressing its will that workmen's compensation laws of the States should apply to all injuries within the admiralty jurisdiction. But in *Knickerbocker Ice Co.* v. *Stewart,* 253 U. S. 149, this statute was held to be an unconstitutional delegation of the power of Congress to alter and amend the maritime law; and in *Washington* v. *Dawson & Co.,*

264 U. S. 219, the same result was reached with respect to a subsequent statute by which Congress endeavored to make the State workmen's compensation laws applicable only to longshoremen and harbor workers within the admiralty jurisdiction.

It thus became apparent that if the benefits of workmen's compensation legislation were to be extended to longshoremen and harbor workers, it must be by virtue of a general Federal act applying to all places within the admiralty jurisdiction throughout the country. Following a suggestion made in the opinion of this Court in *Washington* v. *Dawson & Co., supra,*[1] the Longshoremen's and Harbor Workers' Compensation Act was enacted by Congress.[2]

This statute is a comprehensive workmen's compensation law, modelled after the New York State compensation law. (See House Report No. 1190,

---

[1] "Without doubt Congress has power to alter, amend or revise the maritime law by statutes of general application embodying its will and judgment. This power, we think, would permit enactment of a general employers' liability law or general provisions for compensating injured employees * * *." *Washington* v. *Dawson & Co.*, 264 U. S. 219, 227.

[2] Mr. O'Connor, of New York, speaking in the House on March 2, 1927 (69 Cong. Rec. 5413), said:

"It has been the effort of all leaders interested in this question of social justice to find a way out of this jurisdictional dilemma. That was clearly pointed out by Mr. Justice McReynolds in the recent case of *The State of Washington* v. *Dawson* (264 U. S. 219). The court there stated that Congress had the power to protect these workmen, and this bill carries out the suggestion of our highest court."

69th Congress, 1st Sess., p. 2.) It is said that the New York law was used as a model because a considerable majority of the workmen affected by it are employed in New York.

By Section 39 of the Act its administration was entrusted to the experienced United States Employees' Compensation Commission. The Commission appoints the deputy commissioners before whom the hearings are held and who make the awards. The Commission is also authorized to make rules and regulations for the administration of the Act. Under this authority, the Commission issues instructions to the deputy commissioners,[3] it has published a series of opinions for their guidance, and it exercises a constant supervision over their work.[4]

---

[3] For example, instructions were issued June 18, 1927, establishing compensation districts, on September 28, 1927, and December 10, 1927, relating to the form of award to be made when compensation is granted or denied, and including the requirement that the deputy commissioner make a specific finding of the facts, and on May 15, 1928, relating to the procedure to be followed by the deputy commissioners in the case of suits brought against them under the Act, and to the procuring of the assistance of the United States attorneys in such cases.

[4] By the Act of May 17, 1928, c. 612, 45 Stat. 600, the provisions of the Longshoremen's and Harbor Workers' Compensation Act are made applicable to employees within the District of Columbia. In other words, the Longshoremen's and Harbor Workers' Compensation Act is now the Workmen's Compensation Act for the District of Columbia, and the decision of the present case will be applicable to employees within the District as well as to those within the admiralty jurisdiction.

The purposes of workmen's compensation legislation were primarily two. Perhaps the most important of these was to impose upon the employer liability for compensation irrespective of fault in place of the common law action for negligence and its traditional defenses. But another purpose of much moment was to insure speed and certainty in payment of compensation to injured workmen. The common law system frequently resulted in great delays and considerable expense. Experience had shown that often as great hardship was caused by the delay in recovering damages as from the injury itself. In order to correct these evils workmen's compensation laws set up an administrative tribunal which it was hoped would be able to adjust disputes concerning compensation in a fair and expeditious manner.

The present case concerns the validity of a provision in the Longshoremen's and Harbor Workers' Compensation Act which was designed to facilitate the prompt determination of suits arising under the Act. Unless this provision that court review of the administrative award shall be confined to questions of law only is valid, the time required for the final determination of the average compensation award will be greatly increased and the Act will have fallen far short of its mark.

The provision that the administrative determination of fact shall be conclusive in the courts, when it is supported by evidence, is found in a great majority of the State workmen's compensation

laws. The State courts have without exception upheld such provisions. For fifteen years the books have been full of such cases.[5]

In at least two instances this Court has considered State workmen's compensation laws which contained provisions that administrative findings of fact should be final. In *New York Central Railroad Co.* v. *White,* 243 U. S. 188, the validity of the New York compulsory Workmen's Compensation Law was upheld. In the opinion reference was made to the fact that the decision of the Commission was subject to an appeal to the courts (p. 194) "on questions of law only," and it was said (pp. 207–208):

> No question is made but that the procedural provisions of the act are amply adequate to afford the notice and opportunity to be heard required by the Fourteenth Amendment.

In *Booth Fisheries Co.* v. *Industrial Commission of Wisconsin,* 271 U. S. 208, it was sought to present to this Court the precise question which is now being urged. But that case arose under the Wisconsin Compensation Act, which is a so-called elective Act, and this Court held that since the employer had elected to proceed under the Act he could not challenge the constitutionality of the provision making the Commission's findings of fact conclusive.[6]

---

[5] Some of these cases are cited in note 12, *infra*, p. 42.

[6] This decision was followed in the *per curiam* decision in *Pierce* v. *Barker*, 274 U. S. 718.

In the present case the question is directly presented under a compulsory compensation act. We submit that the statute properly interpreted does not authorize a trial *de novo* of the facts before the District Court and that as so interpreted the statute is constitutional.

## II

### THE STATUTE DOES NOT REQUIRE OR AUTHORIZE A TRIAL DE NOVO

Section 21 of the Longshoremen's and Harbor Workers' Compensation Act (*supra*, pp. 3–4) provides that:

> If not in accordance with law, a compensation order may be suspended or set aside, in whole or in part, through injunction proceedings, mandatory or otherwise, brought by any party in interest against the deputy commissioner making the order, * * *.

Thus, the only ground on which a compensation order may be set aside is that it is "not in accordance with law."

The language of this section was adopted from the statutory provisions for review of the decisions of the Board of Tax Appeals by the Circuit Courts of Appeals. By Section 1003 (b) of the Revenue Act of 1926 it is provided that the Circuit Courts of Appeals shall have power to modify or to reverse the decision of the Board, "if the decision of the Board is not in accordance with law." It is settled that under this provision the Board's determinations of fact, when supported by evidence, are

conclusive. *Phillips* v. *Commissioner,* 283 U. S. 589; *Old Colony Trust Co.* v. *Commissioner,* 279 U. S. 716; *Avery* v. *Commissioner,* 22 F. (2d) 6 (C. C. A. 5th); *American Savings Bank & Trust Co.* v. *Burnet,* 45 F. (2d) 548 (C. C. A. 9th); *Nichols* v. *Commissioner,* 44 F. (2d) 157 (C. C. A. 3d); *Bedell* v. *Commissioner,* 30 F. (2d) 622 (C. C. A. 2d). There is no room for any other construction of the same words as they are used in the Longshoremen's and Harbor Workers' Compensation Act. Although we believe that this alone is sufficient to make the proper construction of the phrase "if not in accordance with law" wholly free from doubt, there are numerous other considerations which dictate the same conclusion.

Plainly the statute can not mean that the legality of an administrative order is to be tested by new proofs subsequently taken in court. The legality of the compensation order must depend upon the evidence taken in the administrative proceeding, and proofs subsequently taken can have no relevancy to the only question open to inquiry before the District Court. Had Congress intended a trial *de novo* in the District Court the jurisdiction of the court would not have been limited to consideration of the legality of the administrative order. The words "if not in accordance with law," which plainly limit the power of the court to "suspend or set aside" the order, like the words "as the facts and law of the case may warrant" under consideration in *Ma-King Co.* v. *Blair,* 271 U. S. 479, 483,

merely give the court authority to determine whether the order is based upon an error of law, is wholly unsupported by the evidence, or is arbitrary or capricious. The language does not permit reconsideration of controverted questions of fact either upon the administrative record or by trial *de novo* in the District Court. Conclusive effect must be given to the administrative determinations of fact if they are supported by the evidence, and judicial review is limited to the legality of the administrative order. This interpretation, plain enough as we see it from the words which define and limit the authority of the court to suspend or set aside an order, is strongly supported by the frame and purpose of the Act as a whole.

The purpose of the Longshoremen's and Harbor Workers' Compensation Act is to extend to workers upon the navigable waters of the United States, who can not be protected by State legislation, the benefits of a compulsory compensation system for disability or death resulting from injury received in the course of their employment. One of the benefits of the Act is that it eliminates the delay and expense incident to litigation. This benefit would be lost if the issues of fact as well as of law must be tried twice. If such were the law, the courts would be appealed to in practically every contested case, counsel would be as necessary as formerly, and the provisions for hearing before the deputy commissioner, instead of eliminating the delay of litigation

would be a useless waste of time. This, we submit, was not the intention of Congress.

Other sections of the Act support the same conclusion. Sections 14 and 18–28 of the Act provide in detail the powers and duties of the deputy commissioner in making an award. Section 22 provides for modification of an award by the deputy commissioner on his own initiative or on application of an interested party under the procedure of Section 19. Section 23 provides that the deputy commissioner on a hearing is not bound by common law or statutory rules of evidence or by technical or formal rules of procedure except as specifically provided in the Act. Sections 24 and 25 provide for the attendance of witnesses, the taking of testimony by deposition, and the payment of witnesses. Section 27 provides that the deputy commissioner shall have power to preserve and enforce order during any such proceedings; to issue subpoenas for, to administer oaths to, and to compel the attendance and testimony of witnesses or the production of documents, records, and other evidence; to examine witnesses and to do all things conformable to law which may be necessary to enable him to discharge the duties of his office and arrive at a proper conclusion as to whether an award is payable for the alleged injury. Under the Act the deputy commissioner is given broad powers for determining all questions affecting the merits of any claim filed before him by an injured employee. (Sec. 19 (a)).

It can not be that Congress intended all this as a mere rehearsal for a trial *de novo* in the District Court.

The statute plainly provides in detail for an administrative trial resulting in a determination of fact and law, and the making of a compensation order which may be reviewed in the District Court if it be not in accordance with law. Even in that event the court may only suspend or set aside and there is no power in the court to enter a compensation order of its own. In this legislative scheme there can be no place for a trial of the issues *de novo*. Under the ruling of the court below the administrative provisions of the Act would become wholly ineffective.

A speedy determination of the rights of an injured longshoreman without the usual delays incident to litigation in the courts was undoubtedly intended. Section 19 of the Act provides that within ten days after a claim is filed before him, the deputy commissioner shall notify the interested parties that such claim has been filed, and if a hearing on the claim is ordered by the deputy commissioner notice shall be given the interested parties at least ten days in advance of such hearing and the deputy commissioner must, within 20 days after such hearing, reject the claim or make an award. Section 21 provides that a compensation order shall become final within thirty days unless there is filed within that period injunction proceedings in the United States District Court as provided in Section

21 (b). All the provisions of the Act dealing with the manner in which a remedy is given to an injured employee and the limited time within which action must be taken indicate a clear intention on the part of Congress that the facts should be speedily determined by the deputy commissioner so that compensation may be awarded without the delay usually incident to litigation in the courts. The interests of the adverse party before the deputy commissioner are properly protected under Section 21 (b), which provides that the order of the deputy commissioner may be set aside if not made in accordance with law, and the action to be taken by the courts is confined within those limits. If there is evidence before the deputy commissioner to sustain his award, the District Court should affirm the award without holding a trial *de novo*.

## III

### THE STATUTE AS SO CONSTRUED IS CONSTITUTIONAL

*A. It does not violate the due process clause of the Fifth Amendment.*

Section 21 of the Longshoremen's and Harbor Workers' Compensation Act is not contrary to any provision of the Constitution because it limits the District Court to a consideration of the evidence presented before the deputy commissioner and his findings made on that evidence. The due process clause of the Fifth Amendment is fully satisfied by the provision for a hearing before an administrative tribunal and for a judicial review

of the administrative determination if that determination is "not in accordance with law."

"Due process of law" does not require that all proceedings relating to liberty or property be proceedings in a court. In *Reetz* v. *Michigan*, 188 U. S. 505, 507, this Court said that—

> we know of no provision in the Federal Constitution which forbids a state from granting to a tribunal, whether called a court or a board of registration, the final determination of a legal question. Indeed, it not infrequently happens that a full discharge of their duties compels boards, or officers of a purely ministerial character, to consider and determine questions of a legal nature. Due process is not necessarily judicial process.

And in *Weimer* v. *Bunbury*, 30 Michigan 201, 211, Judge Cooley said:

> There is nothing in these words ["due process of law"], however, that necessarily implies that due process of law must be judicial process. Much of the process by means of which the government is carried on and the order of society maintained is purely executive or administrative.

In *Long Island Water Supply Co.* v. *Brooklyn*, 166 U. S. 685, 695, this Court said that—

> there is no denial of due process in making the findings of fact by the triers of fact, whether commissioners or a jury, final as to such facts, and leaving open to the courts simply the inquiry as to whether there was

> any erroneous basis adopted by the triers in their appraisal, or other errors in their proceedings.

The rule was recently summarized in the opinion of this Court in *Phillips* v. *Commissioner of Internal Revenue*, 283 U. S. 589, 600. It was there said:

> It has long been settled that determinations of fact for ordinary administrative purposes are not subject to review. * * * Save as there may be an exception for issues presenting claims of constitutional right,[7] such administrative findings on issues of fact are accepted by the courts as conclusive if the evidence was legally sufficient to sustain them and there was no irregularity in the proceedings.

In numerous instances Congress has expressly provided by statute that administrative findings of fact when supported by evidence shall be conclusive. Thus, in Section 5 of the Federal Trade Commission Act (Act of September 26, 1914, c. 311, 38 Stat. 717, 720; U. S. C., Title 15, Sec. 45) it is provided that:

> The findings of the commission as to the facts, if supported by testimony, shall be conclusive.

The same provision is found in Section 11 of the Clayton Act (Act of October 15, 1914, c. 323, 38

---

[7] The contention that the present case is one presenting an issue of constitutional right and thus within the exception to the general rule that administrative determinations of fact may be made final is considered, *infra*, pp. 36-37.

Stat. 730, 735; U. S. C., Title 15, Sec. 21). In the antidumping provisions contained in Section 316 (c) of the Tariff Act of 1922, c. 356, 42 Stat. 858, 944 (U. S. C., Title 19, Sec. 176), it is provided, with respect to the findings of the Board of General Appaisers, that—

> Such findings, if supported by evidence, shall be conclusive, except that * * * an appeal may be taken from said findings upon a question or questions of law only to the United States Court of Customs Appeals * * *.

This provision was reenacted in Section 337 (c) of the Tariff Act of 1930, c. 497, 46 Stat. 590, 704 (U. S. C. Sup. IV, Title 19, Sec. 1337 (c)). And in the Act of July 1, 1930, c. 788, 46 Stat. 844 (U. S. C. Sup. IV, Title 47, Sec. 96), amending Section 16 of the Radio Act of 1927, relating to review of decisions of the Federal Radio Commission by the Court of Appeals of the District of Columbia, it is provided that "the review by the court shall be limited to questions of law and * * * findings of fact by the commission, if supported by substantial evidence, shall be conclusive * * *."

In many decisions of this Court statutes of this type have been applied, and in other decisions findings of administrative bodies have been held conclusive, even though the statutes involved did not explicitly so provide. Thus, as to the Federal Trade Commission, this Court said in *Federal*

*Trade Commission* v. *Curtis Publishing Co.*, 260 U. S. 568, 580:

> Manifestly, the court must inquire whether the Commission's findings of fact are supported by evidence. *If so supported, they are conclusive.* (Italics ours.)

The same rule was announced as to proceedings by the Federal Trade Commission under the Clayton Act in *International Shoe Co.* v. *Federal Trade Commission*, 280 U. S. 291, 297.

Other cases in which this Court has held that administrative findings of fact affecting property rights or the liberty of the individual may be made conclusive when supported by the evidence are very numerous. Thus, the courts will not review the findings of fact of the Interstate Commerce Commission by passing upon the credibility of witnesses or the effective weight of testimony. See, *e. g.*, *Interstate Commerce Commission* v. *Delaware Railroad*, 220 U. S. 235, 251; *Interstate Commerce Commission* v. *Union Pacific Railroad*, 222 U. S. 541; *Interstate Commerce Commission* v. *Louisville & Nashville R. R. Co.*, 227 U. S. 88; *Western Papermakers Chemical Co.* v. *United States*, 271 U. S. 268; *Virginian Railway* v. *United States*, 272 U. S. 658, 663.

It has frequently been held that decisions of heads of executive departments upon questions of fact are final and conclusive. This has been held concerning decisions of the Postmaster General (*Bates & Guild Co.* v. *Payne*, 194 U. S. 106; *Public*

*Clearing House* v. *Coyne*, 194 U. S. 497); the Secretary of Agriculture (*Houston* v. *St. Louis Independent Packing Co.*, 249 U. S. 479; *Tagg Bros. & Moorehead* v. *United States*, 280 U. S. 420, 443–444); the Secretary of the Interior (*Medbury* v. *United States*, 173 U. S. 492); and the Secretary of Labor and the immigration officials when acting within the scope of their authority (*Nishimura Ekiu* v. *United States*, 142 U. S. 651; *Fong Yue Ting* v. *United States*, 149 U. S. 698; *Lem Moon Sing* v. *United States*, 158 U. S. 538; *United States* v. *Ju Toy*, 198 U. S. 253; *Quon Quon Poy* v. *Johnson*, 273 U. S. 352). The same result has been reached with respect to the determinations of fact of other administrative officials. Thus, the findings of fact of the customs appraisers have been held conclusive. *Passavant* v. *United States*, 148 U. S. 214. The same result has been reached as to the findings of fact of the Land Department (*Smelting Co.* v. *Kemp*, 104 U. S. 636; *Burfenning* v. *Chicago, St. Paul, etc., Ry.*, 163 U. S. 321, 323; *Johnson* v. *Drew*, 171 U. S. 93); the Director of the Veterans' Bureau (*Silberschein* v. *United States*, 266 U. S. 221; *United States* v. *Williams*, 278 U. S. 255), and of the Commissioner of Internal Revenue, both with respect to the issuance of permits under the prohibition laws (*Ma-King* v. *Blair*, 271 U. S. 479, 483), and with respect to the question whether a corporation is entitled to a "special assessment" under the excess profits tax. *Williamsport Wire*

*Rope Co.* v. *United States*, 277 U. S. 551. Similarly the findings of fact of the Board of Tax Appeals are conclusive upon the courts. *Phillips* v. *Commissioner*, 283 U. S. 589. See also *Old Colony Trust Co.* v. *Commissioner*, 279 U. S. 716.

These decisions make it clear beyond question that there is nothing in the Constitution establishing a universal rule that there must be a trial *de novo* in the courts in all suits to set aside decisions made by administrative authorities. The award of compensation by a deputy commissioner under the Longshoremen's Compensation Act and the finding of facts upon which the award is made are not different in substance from findings and orders made by the Federal Trade Commission, the Interstate Commerce Commission, or other administrative bodies. The Act requires a hearing before the deputy commissioner on the application of any party in interest. The Act confers upon the United States Employees' Compensation Commission power to make rules and regulations for the purpose of carrying out the provisions of the Act, and under those regulations a deputy commissioner is required to make findings of fact in support of his order. The Act fixes the amount of compensation to be awarded in accordance with the rate of wages being received, and in making an order the deputy commissioner is merely administering the provisions of the statute.

The jurisdiction of the District Court under Section 21 (b) is limited to a determination of the

question whether the order is "not in accordance with law." This requires a consideration of the case on the record made before the deputy commissioner. If there is substantial evidence to support the order, the findings of the deputy commissioner are conclusive. There is no contention here that the findings of the deputy commissioner do not find support in the evidence which was presented before him.

The court below relied on several decisions of this Court to support its conclusion that the Constitution required the trial in the District Court in the instant case to be a trial *de novo*. These cases are: *Ohio Valley Water Co.* v. *Ben Avon Borough*, 253 U. S. 287; *Bluefield Co.* v. *Public Service Commission*, 262 U. S. 679, 689; *Lehigh Valley R. R.* v. *Commissioners*, 278 U. S. 24, 37–41; *Liu Hop Fong* v. *United States*, 209 U. S. 453, 461; *Ng Fung Ho* v. *White*, 259 U. S. 276, 284. We submit that none of these decisions requires the result reached in the court below.

These cases show that in this field of law as in so many others it is impossible to generalize. It can not be contended that all administrative determinations of fact on any subject may be validly made conclusive. Yet it is equally clear from the many cases cited in the previous pages of this brief that there is no basis for a contention that no administrative determinations of fact may constitutionally be made conclusive. The problem here as elsewhere

is where to draw the line. We believe that the true rule to be gathered from the cases is that the scope of the "judicial review" required, that is the degree to which the administrative determination may be made conclusive, depends upon the nature of the field in which the administrative action takes place.[6] We propose to show that the cases relied upon by the court below arose in fields so different from that involved in the present case that they can have no application here. And we further propose to show that an order of a commissioner awarding compensation for an industrial accident is an action taken in a field in which this Court and other courts have uniformly held that the administrative finding of facts may validly be made conclusive.

The first three cases relied on by the court below deal with the power of administrative bodies to establish rates or otherwise to provide rules for future conduct, that is, to legislate. In determining a rate under which a public utility must operate in the future, a commission is operating as the delegate of the legislature and is performing a function which but for its complexity would be performed by the legislature.[7] That the order of a commission establishing a rate is essentially legislative in

---

[6] See Dickinson, Administrative Justice and the Supremacy of Law (1927) pp. 69–75; Frankfurter, *The Task of Administrative Law* (1927) 75 U. of Pa. L. Rev. 614, 619–20.

[7] Thus, the Congress has recently by statute prescribed the fare to be charged school children on the street railways of the District of Columbia. Act of February 25, 1931, c. 302, 47 Stat. 1419.

its character has long been recognized. Thus, in *Prentis* v. *Atlantic Coast Line*, 211 U. S. 210, 226, this Court said:

> The establishment of a rate is the making of a rule for the future, and therefore is an act legislative not judicial in kind * * *.

In the *Ohio Valley Water Co. case* and the cases which have followed it, this Court has determined that due process of law requires that there be afforded an opportunity for a judicial review both on the law and the facts of an order of a commission which is functioning in a legislative capacity in determining a rate. An act of the legislature would necessarily be subject to review in the courts if the issue of confiscation were raised against it and the decision in the *Ohio Valley case* is simply that a legislative rate-making order of a commission must be subject to the same review as an act of the legislature.

But it is, of course, clear that the *Ohio Valley Water Company case* did not overrule decisions arising in other fields of administrative activity in which it has repeatedly been held that determinations of fact may be made conclusive when they are supported by evidence. Indeed, many such decisions have been announced by this Court since the decision of the *Ohio Valley Water Company case*.[10]

---

[10] *E. g.*, *Federal Trade Commission* v. *Curtis Publishing Co.*, 260 U. S. 568, 580; *Virginian Railway* v. *United States*, 272 U. S. 658, 663; *United States* v. *Williams*, 278 U. S. 255; *Tagg Bros. & Moorehead* v. *United States*, 280 U. S. 420, 443-444; *Phillips* v. *Commissioner*, 283 U. S. 589.

In the present case the administrative proceedings were not legislative in character but were brought to determine a present liability based on past facts and existing legislation. In such a case the administrative body is sitting in a *quasi*-judicial capacity and under the numerous decisions of this Court, heretofore referred to, its conclusions on the facts when supported by evidence may properly be made conclusive.

It may be contended that the *Ohio Valley Water Company case* is based on "confiscation," and that there is likewise "confiscation" when, as in the present case, an administrative officer orders a payment of money to be made by one person to another. Such an order based upon a finding of fact upon which the law predicates liability is not confiscation in any true sense of that term. But passing the obvious confusion of terms, much administrative action involves the loss of property to some one. Nevertheless, this Court has frequently held that administrative determinations of fact in such cases may be conclusive. The distinction involved between the *Ohio Valley Water Company case* and such cases, we submit, does not depend upon the deprivation of property but upon whether the administrative order is legislative in character, providing a rule for future conduct, or is *quasi*-judicial in character, establishing a liability based upon past events.

The distinction between the *Ohio Valley Water Company* case and cases such as the present lies

in the nature of the controversy involved. The determination of rates for public utilities is a question of great complexity, depending upon a great many factors, very few of which can be isolated as questions of law or as questions of fact. Thus, one of the factors is the value of the utility. But it is clear that determination of the value of a utility involves consideration of difficult questions of law as well as of questions of fact. In such a controversy, it is virtually impossible to separate questions of law from questions of fact. To make the administrative determination of such a question conclusive would be to deprive the utility of its day in court. This Court has accordingly determined that in a rate-making controversy a utility is entitled to an independent judicial review of the entire question.

But in the present case the issues before the administrative officer are entirely different. They are relatively simple, and they present for the most part pure questions of fact—whether a particular event in the past did or did not occur. Such questions are particularly appropriate for determination by an administrative officer. For centuries we have had such questions of fact determined by laymen on juries, subject only to the supervision of a court as to the law. The citizen is amply protected by the provision for a review of the administrative order in court in case the order is arbitrary or fraudulent, without any foundation in the evidence, or otherwise "not in accordance with law."

The *Liu Hop Fong case,* relied on by the court below, is clearly no more than a determination that the statute involved in that case by its terms provided for a trial *de novo* on an appeal to the District Court. A decision under such a statute, of course, has no bearing on the constitutionality of a statute which provides that the administrative determination of fact shall be final.

The final case relied upon by the court below is *Ng Fung Ho* v. *White,* 259 U. S. 276. It was there held that a person, claiming to be a citizen, who had been ordered deported by the Secretary of Labor, was entitled to a judicial determination of his citizenship. We do not regard this decision as controlling in the present case. The question of citizenship was there considered to be jurisdictional, because, if the person involved was a citizen, the Secretary of Labor was wholly without authority to order his deportation. Of course, administrative determinations are valid only when they are made within the power which has been conferred. The determination of the question whether the administrative officer has exceeded his authority is essentially a question of law subject to review in the courts. No such question arises in this case. The statute defines the commissioner's jurisdiction. It grants "full power and authority to hear and determine all questions" in respect of the claim for compensation. (Sec. 19 (a).) It follows that Knudson's assertion of employment, made in his claim and disputed by Benson, presented a question which

the commissioner had power—that is, jurisdiction—to determine. There was nothing inherent in the nature of this issue to distinguish it from other questions of fact which may constitutionally be left to administrative determination.

Just as the *Ohio Valley case* is distinguishable because of the nature of the question there presented, so is the *Ng Fung Ho case* distinguishable from the instant case. An administrative order of deportation is a matter of the utmost moment to the person concerned. Deportation of a citizen is unlawful exile, an intolerable injustice in modern times. Before so serious a consequence is visited upon one claiming to be a citizen, the least a civilized State can do is to afford him the opportunity to establish the fact of citizenship in a court of justice before the order for his deportation is made final. That the rule is limited in its application to the claim of citizenship is clear from the many decisions which support the general rule that determinations of all other fact questions in deportation and exclusion cases under our immigration laws are not disturbed by the courts if supported by evidence taken in the administrative proceedings. Clearly *Ng Fung Ho* v. *White, supra,* can not rule the decision in this case. At the time Knudsen was employed, Benson had notice through the Longshoremen's and Harbor Workers' Compensation Act that such a liability might be imposed. The liability was a risk incidental to his business. He could, and under Sec-

tion 32 of the Act should, have insured against it, and to a certain extent wages and prices could have been adjusted accordingly.

The field in which the administrative action taken in the present case lies is a field in which this Court and other courts have uniformly held that the administrative determination of the facts when supported by evidence may constitutionally be made conclusive. Reference has already been made (*supra*, p. 15) to the decisions of this Court in *New York Central Railroad Co.* v. *White*, 243 U. S. 188, and other cases, in which State workmen's compensation laws were held constitutional although they contained provisions for the finality of administrative determinations of fact. Probably the present question would never have been raised were it not for the decision in *Ohio Valley Water Co.* v. *Ben Avon Borough*, 253 U. S. 287. We have already contended that this case is not controlling here. That contention is further supported by the overwhelming number of Federal and State decisions in which the findings of fact of workmen's compensation commissions have been held conclusive.

The precise question involved in this case has been considered in numerous lower Federal courts in cases arising under the Longshoremen's and Harbor Workers' Compensation Act. In every case other than the instant case the contention which we now make has been sustained.

The question has been considered by four circuit courts of appeals, other than the court below. The

Circuit Court of Appeals for the Second Circuit in *Wilson & Co.* v. *Locke, Deputy Commissioner,* 50 F. (2d) 81, and the Circuit Court of Appeals for the Fourth Circuit in *Wheeling Corrugating Co.* v. *McManigal, Deputy Commissioner,* 41 F. (2d) 593, held that there is no right of trial *de novo* in the District Court, after considering one or both of the opinions in the case at bar. The Circuit Court of Appeals for the Ninth Circuit in *Northwestern Stevedoring Co.* v. *Marshall, Deputy Commissioner,* 41 F (2d) 28, and the Circuit Court of Appeals for the Third Circuit in *McCahan Company* v. *Norton, Deputy Commissioner,* 43 F (2d) 505, reached the same conclusion and held the Act constitutional.

Except for the decision in this case the district courts have uniformly held that there is no right of trial *de novo* in the district court and that the district court is confined in the consideration of the case to the record made before the deputy commissioner and to the determination of the validity of the administrative award. The cases reaching this result are cited in the footnote.[11]

---

[11] *Obrecht-Lynch Corp.* v. *Clark*, 30 F. (2d) 144 ( D.Md.); *Merchants' & Miners' Transp. Co.* v. *Norton*, 32 F. (2d) 513 (E. D. Pa.); *Joyce* v. *Deputy Commissioner*, 33 F. (2d) 218 (D. Me.); *Pocahontas Fuel Co.* v. *Monahan*, 34 F. (2d) 549 (D. Me.); *Grays Harbor Stevedore Co.* v. *Marshall*, 36 F. (2d) 814 (W. D. Wash.); *Howard* v. *Monahan*, 31 F. (2d) 480, 33 F. (2d) 220 (S. D. Tex.); *Keyway Stevedoring Co.* v. *Clark*, 43 F. (2d) 983 (D. Md.); *Showers* v. *Crowell*, 46 F. (2d) 361 (W. D. La.); *Jarka Corporation* v. *Monahan*, 48 F. (2d) 283 (D. Mass.); *Todd Dry Docks, Inc.*, v. *Marshall*, 49 F. (2d) 621 (W. D. Wash.).

A great majority of the State workmen's compensation acts expressly provide that administrative findings of fact shall be final. Apparently without a single exception such provisions have been held valid and constitutional by the State courts. The decisions reaching this result are too numerous to catalogue. No effort has been made to present an exhaustive collection of such authorities but a few typical cases are cited in the footnote.[12] These cases of course arise under the Fourteenth Amendment, but no reason is perceived why they are not equally applicable when the question arises under the identical language of the Fifth Amendment.

---

[12] Some of the cases so holding are: *Blackenship* v. *Industrial Comm.*, 34 Ariz. 2; *Southwestern Surety Ins. Co.* v. *Pillsbury*, 172 Cal. 768; *Employers' Mutual Ins. Co.* v. *Industrial Comm.*, 65 Colo. 283; *New Jersey Fid. Ins. Co.* v. *Patterson*, 86 Colo. 580; *Montgomery* v. *Maryland Casualty Co.*, 169 Ga. 746; *Jenkins* v. *Boise Payette Lumber Co.*, 49 Idaho 24; *Nega* v. *Chicago Railways Co.*, 317 Ill. 483; *Columbia School Supply Co.* v. *Lewis*, 65 Ind. App. 339; *Star Publishing Co.* v. *Johnson*, 83 Ind. App. 309; *Hazard Blue Grass Coal Corp.* v. *Clemens*, 209 Ky. 486; *Simmons' Case*, 117 Maine 175; *Adams' Case*, 124 Maine 295; *Bischoff* v. *American Car & Foundry Co.*, 190 Mich. 229; *Matter of Heitz* v. *Ruppert*, 218 N. Y. 148; *Helfrick* v. *Dahlstrom Metallic Door Co.*, 256 N. Y. 199; *Williams* v. *Thompson*, 200 N. C. 468; *Choctaw Portland Cement Co.* v. *Lamb*, 79 Okla. 109; *McCarthy* v. *General Electric Co.*, 293 Pa. 448; *Campbell* v. *Eagle & Blue Bell Mining Co.*, 64 Utah 430.

The decisions of the State courts do not distinguish between the compulsory and the so-called elective acts. Of course, the decisions under elective acts, like the decision of this Court in *Booth Fisheries Co.* v. *Industrial Commission*, 271 U. S. 208, are not authority in the present case which arises under a compulsory act.

For the most part the State courts have regarded the question as so clear as not to merit discussion. And, indeed, it has generally been so regarded since the time of the earliest workmen's compensation laws. There is here a practical construction of the constitutional provision too clear to be disregarded. But in at least two of the State cases arising under compulsory workmen's compensation laws, the same argument as that advanced here (based on *Ohio Valley Water Co.* v. *Ben Avon Borough*, 253 U. S. 287) has been carefully considered and rejected.

In *Nega* v. *Chicago Railways Co.*, 317 Ill. 483, it was contended that the Illinois workmen's compensation law was invalid because it provided that the findings of fact of the industrial board should be conclusive. The argument in support of this contention was based upon the *Ohio Valley Water Company case*. In a careful opinion the Supreme Court of Illinois rejected the contention and held that the decision of this Court in the *Ohio Valley Water Company case* was not applicable to the findings of fact of a workmen's compensation commission. The court said (p. 489):

> The *Ben Avon Borough case* appears to base the right to review facts on the proposition that rate-making is a legislative function, in which questions of fact are the only issue and in which the findings are in nowise judicial in character.

* * * * *

> We are cited to no case, and we have been able to find none, holding that a statute which permits judicial review of questions of law, only, arising on the decisions of an administrative body, where its act is in its nature judicial rather than legislative, violates the due process clause of the Federal constitution.

More recently the Court of Appeals of New York in *Helfrick* v. *Dahlstrom Metallic Door Co.*, 256 N. Y. 199, reached the same conclusion. It was there contended that the New York Workmen's Compensation Act was unconstitutional because it provided that the findings of fact of the Industrial Commission, when supported by the evidence, should be conclusive. The court referred to the many decisions in which it has been held that administrative findings of fact, when supported by the evidence, may be made final, and said (p. 207):

> The appellant claims that the case of *Ohio Valley Water Company* v. *Ben Avon Borough* (253 U. S. 287) has modified all this. Such is not the fact. The fixing of rates to be charged by a public service corporation is held by the Federal court to be legislative in nature, and no action of a commission or a public regulating board can deprive the courts of the right and power to determine whether the rate is confiscatory. Such is the *Ben Avon case,* and nothing more. * * * * * * the full force and effect of the due process clause can not be preserved if the rate-making power is removed from

> judicial investigation. So many are the complications in determining the question of fair return that necessity, not theory, has moved the courts to this conclusion.

Because this decision discusses the precise question now under consideration, both clearly and briefly, it is set forth in full as Appendix A of this brief (*infra*, pp. 52–60.)

*B. It is not contrary to the grant of judicial power in Article III.*

Article III of the Constitution, relating to the judicial power, provides in part:

> The judicial Power of the United States shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. * * *
>
> The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their authority;—* * * to all cases of admiralty and maritime Jurisdiction;—* * *.

Both courts below found some basis for their conclusions in the fact that the cause of action arose on navigable waters of the United States. It is difficult to formulate the precise reasoning of the courts on this point, and the only reference to it in the opinion of the Circuit Court of Appeals is the

statement (R. 187) that the admiralty jurisdiction—

> is vested exclusively in constitutional Federal courts, not in legislative courts or tribunals, or in any executive official.

This is true in the sense that no other courts may exercise the judicial powers peculiar to courts of admiralty, but there is no basis either in the Constitution or in the decisions of this Court for the contention that the Federal district courts sitting in admiralty are the only tribunals competent to consider compensation for injuries sustained on navigable waters. When the injury is such that it is merely a matter of local concern, compensation for such an injury may be had under the State compensation laws and the award may be made by the administrative tribunals created by the State. *Grant Smith-Porter Ship Co.* v. *Rohde,* 257 U. S. 469; *Millers' Indemnity Underwriters* v. *Braud,* 270 U. S. 59.[18] Seamen injured on navigable waters may recover under the Jones Act in actions at law commenced in State courts. *Panama Railroad Co.* v. *Vasquez,* 271 U. S. 557; *International Stevedoring Co.* v. *Haverty,* 272 U. S. 50; *Messel*

[18] In this case this Court said (pp. 64–65):

"In the cause now under consideration the record discloses facts sufficient to show a maritime tort to which the general admiralty jurisdiction would extend save for the provisions of the state Compensation Act; * * *. The Act prescribes the only remedy; its exclusive features abrogate the right to resort to the admiralty court which otherwise would exist."

v. *Foundation Co.*, 274 U. S. 427; *Jamison* v. *Encarnacion*, 281 U. S. 635. It has long been established that when the remedy sought is *in personam*, even though the suit arise upon a maritime contract or is brought to recover for a maritime tort, "the party seeking redress may proceed by libel in the District Court, or he may, at his election, proceed in an action at law, either in the Circuit Court * * *, or in a State court * * *." *Steamboat Co.* v. *Chase*, 16 Wall. 522, 533. The right to sue in the State courts at law is expressly saved to suitors by Sections 24(3) and 256 of the Judicial Code (U. S. C., Title 28, Secs. 41(3), 371), a provision which is derived directly from Section 9 of the Judiciary Act of September 24, 1789, 1 Stat. 73, 76–77.

Quite obviously the enactment of the statute here in question was within the power of Congress to alter, amend, or revise the maritime law by statutes of general application. This power is recognized in a long line of decisions of this Court commencing with *The Lottawanna*, 21 Wall. 558, and frequently considered in connection with legislation of Congress providing compensation for longshoremen and harborworkers, as in *Southern Pacific Co.* v. *Jensen*, 244 U. S. 205, 215; *Knickerbocker Ice Co.* v. *Stewart*, 253 U. S. 149, 160; *Washington* v. *Dawson Co.*, 264 U. S. 219, 227. In the latter case it was said:

> Without doubt Congress has power to alter, amend, or revise the maritime law by

> statutes of general application embodying its will and judgment. This power, we think, would permit enactment of a general employer's liability law or general provisions for compensating employees.

It was expressly in the exercise of this power that the statute here in question was enacted. (See p. 17, *supra*.) This legislative power, as defined in the decisions of this Court, is not limited by rules of procedure in a court of admiralty. It extends to the very body of the substantive maritime law, and in its exercise Congress may change old rights and remedies and create new liabilities and new methods for their enforcement. Certainly there is no limitation upon the exercise of this power to be found in the words of the Constitution extending the judicial power of the United States to all cases of admiralty and maritime jurisdiction.

Both courts below seem to have concluded that it was beyond the power of Congress to provide for the review of a compensation order in any court other than a court of the United States exercising admiralty jurisdiction. But there is no such limitation upon the power of Congress to be found in any words of the Constitution. Congress was clearly authorized to adopt any means it thought appropriate for the proper administration of a system of compensation, if it had power to legislate at all. Accordingly, we submit that the court

was in error in directing the transfer of the cause from the Equity to the Admiralty side of the court. Prejudice followed when the questions already determined by the Commissioner were tried again before the Admiralty court, as if it were a court of first instance sitting to hear and determine a suit in admiralty.

## CONCLUSION

Experience has shown that the Longshoremen's and Harbor Workers' Compensation Act is an exceedingly effective and efficient method of dealing with the problem of compensation for injuries to employees in maritime industry. During the first three years of the existence of the Act (from July 1, 1927, to July 1, 1930), 109,890 injuries were reported to the deputy commissioners. During this period only 134 suits were filed in the Federal district courts under Section 21 (b) of the Act.[14] Thus, less than one-eighth of 1 per cent of the injuries have resulted in litigation. These figures show that the Longshoremen's Act has operated to relieve Federal and State courts of a large amount of litigation which under the rule of the *Jensen case* had been taken from willing State administrative agencies and placed upon the already overburdened shoulders of the courts.

---

[14] These figures are taken from the Annual Reports of the United States Employees' Compensation Commission for the fiscal years ending July 1, 1928, 1929, and 1930. Data for the fiscal year ending July 1, 1931, are not yet available.

There can be no doubt, we believe, that the small amount of litigation is due in large part to the rule followed in every court except the courts below that the trial in the District Court is not a trial *de novo* but is confined to a consideration of the facts found by the deputy commissioner. If the rule adopted by the Circuit Court of Appeals below is sustained, requiring a trial *de novo* in the District Court, there is good reason to believe that the volume of litigation in the Federal courts under the Longshoremen's Act will greatly increase. If an employer or an employee who has lost in the proceeding before the deputy commissioner knows that he may have a complete new trial both as to the law and the facts in the District Court, the temptation for him to try again where he has once failed will be very great. Social experience of the past two decades has shown plainly that the matter of compensation for industrial accidents is best handled by administrative bodies. An affirmance of the judgment below will put more and more of the burden of administering the Longshoremen's Act on the courts, and the consequence will be delay and expense to litigants under the Act, and likewise an increase of delay to other litigants in the Federal courts.

The decision of questions seriously affecting private rights must be committed to some fallible tribunal. Due process of law can rightfully demand no more than that the procedure devised for

reaching this decision give to the individual every opportunity to establish his rights, consistent with maintaining the orderly and efficient administration of Government.

The sole question before the deputy commissioner was a question of fact. There was evidence to support the deputy commissioner's finding, and that finding accordingly should have been held conclusive on the District Court. The judgment of the Circuit Court of Appeals is erroneous and should be reversed.

Respectfully submitted.

THOMAS D. THACHER,
*Solicitor General.*
ERWIN N. GRISWOLD,
*Attorney.*

SEPTEMBER, 1931.

# APPENDIX

## HELFRICK v. DAHLSTROM METALLIC DOOR CO. ET AL.

(Court of Appeals of New York. May 12, 1931. 256 N. Y. 199)

Appeal from Supreme Court, Appellate Division, Third Department.

Proceeding under the Workmen's Compensation Act by Paul Helfrick, claimant, against the Dahlstrom Metallic Door Company, employer, and the Jamestown Mutual Insurance Company, insurer. From an order of the Appellate Division, Third Department (231 App. Div. 775), affirming an award of the State Industrial Commission for compensation to the claimant, the employer and the insurer appeal. By an amendment to the order (232 App. Div. 710), the Appellate Division overruled the constitutional question raised by the employer, and denied leave to appeal, and stated that affirmance was upon the law.

Order of the Appellate Division affirmed.

CRANE, *J.*

On March 23, 1929, Paul Helfrick, of Jamestown, N. Y., was employed as a blacksmith by Dahlstrom Metallic Door Company, of the same place. While engaged in the regular course of his employment on that day, he accidentally injured his fingers, for which the State Industrial Board has made him an award of $395.41. The employer and the insurance carrier challenge the award on the ground that the

procedure under our State Workmen's Compensation Law (Consol. Laws, c. 67) has or will deprive the employer of his property without due process of law, in that the board has been made the final arbiter of the facts without any review upon the weight of evidence in a court of law.

The Labor Law of the state (Consol. Laws, c. 31), by section 12, provides for an Industrial Board consisting of five members, at least one of whom shall be an attorney and counselor at law duly admitted to practice in the state. The members are appointed by the Governor by and with the advice of the Senate; the term of office being six years. Each member is obliged to take the constitutional oath of office.

The Workmen's Compensation Law, by section 20, gives to this board full power and authority to determine all questions in relation to the payment of claims presented to it for compensation. The board shall make or cause to be made such investigation as it deems necessary, and upon application of either party shall order a hearing, and within thirty days after a claim is submitted shall make an award and file the same in the office of the department. This section further provides as follows:

> The decision of the board shall be final as to all questions of fact, and, except as provided in section twenty-three, as to all questions of law.

Section 23 provides for an appeal to the Appellate Division of the Supreme Court within thirty days after the award or decision is made. The board may also of its own motion certify to such Appellate Division questions of law involved in its

decision. The board shall be deemed a party to every such appeal, and the Attorney General, without extra compensation, shall represent it. From the decision of the Appellate Division an appeal lies to this court where the decision has not been unanimous in the Appellate Division, or the consent of that court or of this court has been obtained. Such appeals are subject to the law and practice applicable to appeals in civil actions.

In *Pine* v. *State Industrial Commission,* 107 Okl. 40 [opinion withdrawn; for corrected opinion, see 108 Okl. 185], and *Public Service Gas Co.* v. *Board of Public Utility Com'rs,* 84 N. J. Law, 463, similar statutory provision, making a decision of a commission final as to the facts, was interpreted to mean final as a termination which ended the proceedings, and therefore did not attempt to take from the courts a constitutional power to review the facts. Although by article 6, § 1, of our State Constitution, the Supreme Court is continued with general jurisdiction in law and equity, subject to such appellate jurisdiction of the Court of Appeals as now is or may be prescribed by law, the same Constitution, subsequent to *Ives* v. *South Buffalo Ry. Co.,* 201 N. Y. 271, was amended by Article 1, section 19, to read as follows:

> Nothing contained in this Constitution shall be construed to limit the power of the Legislature to enact laws for the protection of the lives, health, or safety of employees; or for the payment, either by employers, or by employers and employees or otherwise, * * * of compensation for injuries to employees or for death of employees resulting from such injuries without regard to fault as a cause thereof, * * * for the

> adjustment, determination and settlement, with or without trial by jury, of issues which may arise under such legislation; * * *

This court in 1916 decided in *Matter of Heitz* v. *Ruppert,* 218 N. Y. 148, that the decision of the commission or the State Industrial Board was final on all questions of fact, and such has been the practice in this state ever since that time. The decision by the Board does not take from the courts any of the powers invested in them by the State Constitution as was the instance in the Oklahoma and New Jersey cases above cited. Such limitation of review upon appeal is not illegal under our state form of government.

What, however, is the effect of the Federal Constitution under the due process clause of the Fourteenth Amendment? Our Workmen's Compensation Law was before the United States Supreme Court in *New York Central R. R. Co.* v. *White,* 243 U. S. 188, 194, 207, and the opinion of Mr. Justice Pitney refers to the effect of the decision on the facts by the commission or board. He there stated: "No question is made but that the procedural provisions of the act are amply adequate to afford the notice and opportunity to be heard required by the 14th Amendment." True, the court's attention was addressed to the law as a whole and not particularly to this question of the finality of the board's decision on a question of fact. A similar statute was reviewed in *Mountain Timber Co.* v. *Washington,* 243 U. S. 219.

The procedure under our statute appears to comply with all the requirements of due process. A claim is presented to the State Industrial Board

and an opportunity is afforded for a hearing of all parties interested—the employee, the employer, the insurance carrier, and any and every witness whom the parties desire to call. The hearing is conducted much like a trial, with more liberality as to rules of evidence than is permitted in the ordinary case in court. When the decision is made, an appeal lies by either party to the Appellate Division. That court must determine whether or not on the review of the facts there be any evidence to sustain the award. The Industrial Board or the Commission can not make an award without evidence to support it, and this question is always open in the courts on appeal both to the Appellate Division and finally to this Court. Only where there is a conflict in evidence, or the reasonable inferences to be drawn from the evidence, is the decision of the board or commission of this conflict conclusive. This procedure meets all the requisites of due process as recently declared in *Dohany* v. *Rogers*, 281 U. S. 362, 369, where Mr. Justice Stone, writing for the court, said:

> The due process clause does not guarantee to the citizen of a state any particular form or method of state procedure. Under it he may neither claim a right to trial by jury nor a right of appeal. Its requirements are satisfied if he has reasonable notice and reasonable opportunity to be heard and to present his claim or defense, due regard being had to the nature of the proceeding and the character of the rights which may be affected by it. * * * Nor does the equal protection clause exact uniformity of procedure. The Legislature may classify litigation and adopt one type of procedure for one class and a different type for another.

Neither does the hearing before the Industrial Board lack the elements of due process, because the members of that board may be laymen and not lawyers duly admitted to practice within this state. Unlike our own State Constitution, there is nothing in the Federal Constitution or the acts of Congress, including the United States Judicial Code (U. S. Code, title 28, part 1, c. 1) which requires judges of courts, federal or state, to be lawyers or admitted to practice. The United States government, in seeking men for its judiciary or for its United States Attorneys General or district attorneys, can not be cramped in selection by the Legislatures of the States controlling admissions to the bar. There is no federal question, therefore, involved in the personnel of the State Industrial Board. Due process aims at fair dealing, adequate hearing, impartial decision, and the procedure to insure these, rather than with the personal equipment of the deciding body. Some things in government must be left to the sound discretion of the appointing power.

That the determination of commissioners appointed to condemn property for water supply may be conclusive as to value was determined in *Long Island Water-Supply Co.* v. *Brooklyn,* 166 U. S. 685, 695. "There is no denial of due process," said the court, "in making the findings of fact by the triers of fact, whether commissioners or a jury, final as to such facts, and leaving open to the courts simply the inquiry as to whether there was any erroneous basis adopted by the triers in their appraisal, or other errors in their proceedings."

As to the action of the Interstate Commerce Commission, the Supreme Court, in *Interstate Com-*

*merce Commission* v. *Union Pacific R. R. Co.*, 222 U. S. 541, 547, said:

> Its conclusion, of course, is subject to review, but, when supported by evidence, is accepted as final; not that its decision, involving, as it does, so many and such vast public interests, can be supported by a mere scintilla of proof—but the courts will not examine the facts further than to determine whether there was substantial evidence to sustain the order.

See, also, *Crane* v. *Hahlo*, 258 U. S. 142. This is the same duty which rests upon the appellate courts of our state in reviewing the determination of the Industrial Board in workmen's compensation cases. In point is *Wheeling Corrugating Co.* v. *McManigal* [C. C. A.], 41 F. (2d) 593.

The appellant claims that the case of *Ohio Valley Water Co.* v. *Ben Avon Borough*, 253 U. S. 287, has modified all this. Such is not the fact. The fixing of rates to be charged by a public service corporation is held by the federal court to be legislative in nature, and no action of a commission or a public regulating board can deprive the courts of the right and power to determine whether the rate is confiscatory. Such is the *Ben Avon case*, and nothing more. The State Legislature can not arbitrarily fix rates so low that a public utility corporation will not receive a fair return on its capital. Although hearings may be had before a legislative committee, yet they are so lacking in the elements of a judicial proceeding that the rate, when ultimately fixed, is nevertheless considered the fiat or act of the Legislature. The act or determination does not change its nature when passed on to another body created by the Legislature and termed a public service commission or utility board. It performs the same

work in fixing rates as does the Legislature. The rate directed or permitted to be charged and collected must be subject to review by the courts when claimed to be an illegal taking of property. This distinction has been reiterated in *Bluefield Water Works & Improvement Co.* v. *Public Service Commission of State of West Virginia*, 262 U. S. 679, 683, where it was stated:

> The prescribing of rates is a legislative act. The commission is an instrumentality of the state, exercising delegated powers. Its order is of the same force as would be a like enactment by the Legislature.

See, also, *Lehigh Valley R. R. Co.* v. *Board of Public Utility Commissioners*, 278 U. S. 24.

As a utility rate is generally fixed after an inquiry as to the facts by some legislative committee or public service commission, the *Ben Avon case* has awakened some comment. See Yale Law Journal, vol. XXX, pp. 681, 781; Harvard Law Review, vol. XXXIV, p. 862, and vol. XXXV, p. 139. But there is a great body of authority that the full force and effect of the due process clause can not be preserved if the rate-making power is removed from judicial investigation. So many are the complications in determining the question of fair return, that necessity, not theory, has moved the courts to this conclusion.

Whatever confusion, however, there may be in distinguishing legislative from judicial acts regarding rates does not arise in determining the status or injuries of a workman. Here the board or commission determines the events that have passed—the employment, the wages, the accident, the injury.

Such readily submit to oral proof, and the process of finding them is of a judicial nature. Such a board has the dignity and the form of many of our courts, the only distinction being that of name.

We conclude that the points raised by the appellant are without merit, and that our Workmen's Compensation Law does not violate any provision of the Federal Constitution. The Supreme Court of Illinois in *Nega* v. *Chicago Railways Co.*, 317 Ill. 482, arrived at the same conclusion.

*Hawkins* v. *Bleakly*, 243 U. S. 210, and *Booth Fisheries Co.* v. *Industrial Commission of Wisconsin*, 271 U. S. 208, dealt with compensation acts which were elective on the part of the employee.

The order should be affirmed, with costs.

CARDOZO, *Ch. J.*, POUND, LEHMAN, KELLOGG, O'BRIEN, and HUBBS, *J. J.*, concur.

Order affirmed.

U. S. GOVERNMENT PRINTING OFFICE: 1931

[PUBLIC—No. 803—69TH CONGRESS]

[S. 3170]

An Act To provide compensation for disability or death resulting from injury to employees in certain maritime employments, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

SHORT TITLE

SECTION 1. This Act may be cited as "Longshoremen's and Harbor Workers' Compensation Act."

DEFINITIONS

SEC. 2. When used in this Act—

(1) The term "person" means individual, partnership, corporation, or association.

(2) The term "injury" means accidental injury or death arising out of and in the course of employment, and such occupational disease or infection as arises naturally out of such employment or as naturally or unavoidably results from such accidental injury, and includes an injury caused by the willful act of a third person directed against an employee because of his employment.

(3) The term "employee" does not include a master or member of a crew of any vessel, nor any person engaged by the master to load or unload or repair any small vessel under eighteen tons net.

(4) The term "employer" means an employer any of whose employees are employed in maritime employment, in whole or in part, upon the navigable waters of the United States (including any dry dock.)

(5) The term "carrier" means any person or fund authorized under section 32 to insure under this Act and includes self-insurers.

(6) The term "commission" means the United States Employees' Compensation Commission.

(7) The term "deputy commissioner" means the deputy commissioner having jurisdiction in respect of an injury or death.

(8) The term "State" includes a Territory and the District of Columbia.

(9) The term "United States" when used in a geographical sense means the several States and Territories and the District of Columbia, including the territorial waters thereof.

(10) "Disability" means incapacity because of injury to earn the wages which the employee was receiving at the time of injury in the same or any other employment.

(11) "Death" as a basis for a right to compensation means only death resulting from an injury.

(12) "Compensation" means the money allowance payable to an employee or to his dependents as provided for in this Act, and includes funeral benefits provided therein.

(13) "Wages" means the money rate at which the service rendered is recompensed under the contract of hiring in force at the time of the injury, including the reasonable value of board, rent, housing, lodging, or similar advantage received from the employer, and gratuities received in the course of employment from others than the employer.

(14) "Child" shall include a posthumous child, a child legally adopted prior to the injury of the employee, and a stepchild or acknowledged illegitimate child dependent upon the deceased, but does not include married children unless wholly dependent on him. "Grandchild" means a child as above defined of a child as above defined. "Brother" and "sister" include stepbrothers and stepsisters, half brothers and half sisters, and brothers and sisters by adoption, but does not include married brothers nor married sisters unless wholly dependent on the employee. "Child," "grandchild," "brother," and "sister" include only persons who at the time of the death of the deceased employee are under eighteen years of age.

(15) The term "parent" includes step-parents and parents by adoption, parents-in-law, and any person who for more than three years prior to the death of the deceased employee stood in the place of a parent to him, if dependent on the injured employee.

(16) The term "widow" includes only the decedent's wife living with or dependent for support upon him at the time of his death; or living apart for justifiable cause or by reason of his desertion at such time.

(17) The term "widower" includes only the decedent's husband who at the time of her death lived with her and was dependent for support upon her.

(18) The terms "adoption" or "adopted" mean legal adoption prior to the time of the injury.

(19) The singular includes the plural and the masculine includes the feminine and neuter.

COVERAGE

SEC. 3. (a) Compensation shall be payable under this Act in respect of disability or death of an employee, but only if the disability or death results from an injury occurring upon the navigable waters of the United States (including any dry dock) and if recovery for the disability or death through workmen's compensation proceedings may not validly be provided by State law. No compensation shall be payable in respect of the disability or death of—

(1) A master or member of a crew of any vessel, nor any person engaged by the master to load or unload or repair any small vessel under eighteen tons net; or

(2) An officer or employee of the United States or any agency thereof or of any State or foreign government, or of any political subdivision thereof.

(b) No compensation shall be payable if the injury was occasioned solely by the intoxication of the employee or by the willful intention of the employee to injure or kill himself or another.

LIABILITY FOR COMPENSATION

SEC. 4. (a) Every employer shall be liable for and shall secure the payment to his employees of the compensation payable under sections 7, 8, and 9. In the case of an employer who is a subcontractor, the contractor shall be liable for and shall secure the payment of such compensation to employees of the subcontractor unless the subcontractor has secured such payment.

(b) Compensation shall be payable irrespective of fault as a cause for the injury.

EXCLUSIVENESS OF LIABILITY

SEC. 5. The liability of an employer prescribed in section 4 shall be exclusive and in place of all other liability of such employer to the employee, his legal representative, husband or wife, parents, dependents, next of kin, and anyone otherwise entitled to recover damages from such employer at law or in admiralty on account of such injury or death, except that if an employer fails to secure payment of compensation as required by this Act, an injured employee, or his legal representative in case death results from the injury, may elect to claim compensation under this Act, or to maintain an action at law or in admiralty for damages on account of such injury or death. In such action the defendant may not plead as a defense that the injury was caused by the negligence of a fellow servant, nor that the employee assumed the risk of his employment, nor that the injury was due to the contributory negligence of the employee.

TIME FOR COMMENCEMENT OF COMPENSATION

SEC. 6. (a) No compensation shall be allowed for the first seven days of the disability, except the benefits provided for in section 7: *Provided, however*, That in case the injury results in disability of more than forty-nine days, the compensation shall be allowed from the date of the disability.

(b) Compensation for disability shall not exceed $25 per week nor be less than $8 per week: *Provided, however*, That if the employee's wages at the time of injury are less than $8 per week he shall receive his full weekly wages.

MEDICAL SERVICES AND SUPPLIES

SEC. 7. (a) The employer shall furnish such medical, surgical, and other attendance or treatment, nurse and hospital service, medicine, crutches, and apparatus for such period as the nature of the injury or the process of recovery may require. If the employer fails to provide the same, after request by the injured employee, such injured employee may do so at the expense of the employer. The employee shall not be entitled to recover any amount expended by him for such treatment or services unless he shall have requested the employer to furnish the same and the employer shall have refused or neglected to do so, or unless the nature of the injury required such treatment and services and the employer or his superintendent or foreman having knowledge of such injury shall have neglected to provide the same; nor shall any claim for medical or surgical treatment be valid

and enforceable, as against such employer, unless within twenty days following the first treatment the physician giving such treatment furnish to the employer and the deputy commissioner a report of such injury and treatment, on a form prescribed by the commission.

(b) Whenever in the opinion of the deputy commissioner a physician has not impartially estimated the degree of permanent disability or the extent of temporary disability of any injured employee, the deputy commissioner shall have the power to cause such employee to be examined by a physician selected by the deputy commissioner and to obtain from such physician a report containing his estimate of such disabilities. If the report of such physician shows that the estimate of the physician has not been impartial from the standpoint of such employee, the deputy commissioner shall have the power in his discretion to charge the cost of such examination to the employer, if he is a self-insurer, or to the insurance company which is carrying the risk.

(c) All fees and other charges for such treatment or service shall be limited to such charges as prevail in the same community for similar treatment of injured persons of like standard of living, and shall be subject to regulation by the deputy commissioner.

COMPENSATION FOR DISABILITY

SEC. 8. Compensation for disability shall be paid to the employee as follows:

(a) Permanent total disability: In case of total disability adjudged to be permanent 66⅔ per centum of the average weekly wages shall be paid to the employee during the continuance of such total disability. Loss of both hands, or both arms, or both feet, or both legs or both eyes, or of any two thereof shall, in the absence of conclusive proof to the contrary, constitute permanent total disability. In all other cases permanent total disability shall be determined in accordance with the facts.

(b) Temporary total disability: In case of disability total in character but temporary in quality 66⅔ per centum of the average weekly wages shall be paid to the employee during the continuance thereof.

(c) Permanent partial disability: In case of disability partial in character but permanent in quality the compensation shall be 66⅔ per centum of the average weekly wages, and shall be paid to the employee, as follows:

(1) Arm lost, three hundred and twelve weeks' compensation.
(2) Leg lost, two hundred and eighty-eight weeks' compensation.
(3) Hand lost, two hundred and forty-four weeks' compensation.
(4) Foot lost, two hundred and five weeks' compensation.
(5) Eye lost, one hundred and sixty weeks' compensation.
(6) Thumb lost, seventy-five weeks' compensation.
(7) First finger lost, forty-six weeks' compensation.
(8) Great toe lost, thirty-eight weeks' compensation.
(9) Second finger lost, thirty weeks' compensation.
(10) Third finger lost, twenty-five weeks' compensation.
(11) Toe other than great toe lost, sixteen weeks' compensation.
(12) Fourth finger lost, fifteen weeks' compensation.

(13) Loss of hearing: Compensation for loss of hearing of one ear, fifty-two weeks. Compensation for loss of hearing of both ears, two hundred weeks.

(14) Phalanges: Compensation for loss of more than one phalange of a digit shall be the same as for loss of the entire digit. Compensation for loss of the first phalange shall be one-half of the compensation for loss of the entire digit.

(15) Amputated arm or leg: Compensation for an arm or a leg, if amputated at or above the elbow or the knee, shall be the same as for a loss of the arm or leg; but, if amputated between the elbow and the wrist or the knee and the ankle, shall be the same as for loss of a hand or foot.

(16) Binocular vision or per centum of vision: Compensation for loss of binocular vision or for 80 per centum or more of the vision of an eye shall be the same as for loss of the eye.

(17) Two or more digits: Compensation for loss of two or more digits, or one or more phalanges of two or more digits, of a hand or foot may be proportioned to the loss of use of the hand or foot occasioned thereby, but shall not exceed the compensation for loss of a hand or foot.

(18) Total loss of use: Compensation for permanent total loss of use of a member shall be the same as for loss of the member.

(19) Partial loss or partial loss of use: Compensation for permanent partial loss or loss of use of a member may be for proportionate loss or loss of use of the member.

(20) Disfigurement: The deputy commissioner shall award proper and equitable compensation for serious facial or head disfigurement, not to exceed $3,500.

(21) Other cases: In all other cases in this class of disability the compensation shall be 66⅔ per centum of the difference between his average weekly wages and his wage-earning capacity thereafter in the same employment or otherwise, payable during the continuance of such partial disability, but subject to reconsideration of the degree of such impairment by the deputy commissioner on his own motion or upon application of any party in interest.

(22) In case of temporary total disability and permanent partial disability, both resulting from the same injury, if the temporary total disability continues for a longer period than the number of weeks set forth in the following schedule, the period of temporary total disability in excess of such number of weeks shall be added to the compensation period provided in subdivision (c) of this section: Arm, thirty-two weeks; leg, forty weeks; hand, thirty-two weeks; foot, thirty-two weeks; eye, twenty weeks; thumb, twenty-four weeks; first finger, eighteen weeks; great toe, twelve weeks, second finger, twelve weeks; third finger, eight weeks; fourth finger, eight weeks; toe other than great toe, eight weeks.

In any case resulting in loss or partial loss of use of arm, leg, hand, foot, eye, thumb, finger, or toe, where the temporary total disability does not extend beyond the periods above mentioned for such injury, compensation shall be limited to the schedule contained in subdivision (c).

(d) Any compensation to which any claimant would be entitled under subdivision (c) excepting subdivision (c–21) shall, notwith-

standing death arising from causes other than the injury, be payable to and for the benefit of the persons following:

(1) If there be a surviving wife or dependent husband and no child of the deceased under the age of eighteen years, to such wife or dependent husband.

(2) If there be a surviving wife or dependent husband and surviving child or children of the deceased under the age of eighteen years, one half shall be payable to the surviving wife or dependent husband and the other half to the surviving child or children.

(3) The deputy commissioner may in his discretion require the appointment of a guardian for the purpose of receiving the compensation of the minor child. In the absence of such a requirement the appointment for such a purpose shall not be necessary.

(4) If there be a surviving child or children of the deceased under the age of eighteen years, but no surviving wife or dependent husband, then to such child or children.

(5) An award for disability may be made after the death of the injured employee.

(e) Temporary partial disability: In case of temporary partial disability resulting in decrease of earning capacity the compensation shall be two-thirds of the difference between the injured employee's average weekly wages before the injury and his wage-earning capacity after the injury in the same or another employment, to be paid during the continuance of such disability, but shall not be paid for a period exceeding five years.

(f) Injury increasing disability: (1) If an employee receive an injury which of itself would only cause permanent partial disability but which, combined with a previous disability, does in fact cause permanent total disability, the employer shall provide compensation only for the disability caused by the subsequent injury: *Provided, however*, That in addition to compensation for such permanent partial disability, and after the cessation of the payments for the prescribed period of weeks, the employee shall be paid the remainder of the compensation that would be due for permanent total disability. Such additional compensation shall be paid out of the special fund established in section 44.

(2) In all other cases in which, following a previous disability, an employee receives an injury which is not covered by (1) of this subdivision, the employer shall provide compensation only for the disability caused by the subsequent injury. In determining compensation for the subsequent injury or for death resulting therefrom, the average weekly wages shall be such sum as will reasonably represent the earning capacity of the employee at the time of the subsequent injury.

(g) Maintenance for employees undergoing vocational rehabilitation: An employee who as a result of injury is or may be expected to be totally or partially incapacitated for a remunerative occupation and who, under the direction of the commission as provided by section 39 (c) of this Act, is being rendered fit to engage in a remunerative occupation, shall receive additional compensation necessary for his maintenance, but such additional compensation shall not exceed $10 a week. The expense shall be paid out of the special fund established in section 44.

COMPENSATION FOR DEATH

SEC. 9. If the injury causes death, the compensation shall be known as a death benefit and shall be payable in the amount and to or for the benefit of the persons following:

(a) Reasonable funeral expenses not exceeding $200.

(b) If there be a surviving wife or dependent husband and no child of the deceased under the age of eighteen years, to such wife or dependent husband 35 per centum of the average wages of the deceased, during widowhood, or dependent widowerhood with two years' compensation in one sum upon remarriage; and if there be a surviving child or children of the deceased under the age of eighteen years, the additional amount of 10 per centum of such wages for each such child until the age of eighteen years; in case of the death or remarriage of such surviving wife or dependent husband any surviving child of the deceased employee, at the time under eighteen years of age, shall have his compensation increased to 15 per centum of such wage, and the same shall be payable until he shall reach the age of eighteen years: *Provided*, That the total amount payable shall in no case exceed 66⅔ per centum of such wages. The deputy commissioner having jurisdiction over the claim may, in his discretion, require the appointment of a guardian for the purpose of receiving the compensation of a minor child. In the absence of such a requirement the appointment of a guardian for such purposes shall not be necessary.

(c) If there be a surviving child or children of the deceased under the age of eighteen years, but no surviving wife or dependent husband, then for the support of each such child under the age of eighteen years, 15 per centum of the wages of the deceased: *Provided*, That the aggregate shall in no case exceed 66⅔ per centum of such wages.

(d) If there be no surviving wife or dependent husband or child under the age of eighteen years or if the amount payable to a surviving wife or dependent husband and to children under the age of eighteen years shall be less in the aggregate than 66⅔ per centum of the average wages of the deceased; then for the support of grandchildren or brothers and sisters under the age of eighteen years, if dependent upon the deceased at the time of the injury, 15 per centum of such wages for the support of each such person until the age of eighteen years and for the support of each parent, or grandparent, of the deceased if dependent upon him at the time of the injury, 25 per centum of such wages during such dependency. But in no case shall the aggregate amount payable under this subdivision exceed the difference between 66⅔ per centum of such wages, and the amount payable as hereinbefore provided to surviving wife or dependent husband and for the support of surviving child or children.

(e) In computing death benefits the average weekly wages of the deceased shall be considered to have been not more than $37.50 nor less than $12, but the total weekly compensation shall not exceed the weekly wages of the deceased.

(f) All questions of dependency shall be determined as of the time of the injury.

(g) Aliens: Compensation under this chapter to aliens not residents (or about to become nonresidents) of the United States or Canada shall be the same in amount as provided for residents, except that dependents in any foreign country shall be limited to surviving wife and child or children, or if there be no surviving wife or child or children, to surviving father or mother whom the employee has supported, either wholly or in part, for the period of one year prior to the date of the injury, and except that the commission may, at its option or upon the application of the insurance carrier shall, commute all future installments of compensation to be paid to such aliens by paying or causing to be paid to them one-half of the commuted amount of such future installments of compensation as determined by the commission.

DETERMINATION OF PAY

SEC. 10. Except as otherwise provided in this Act, the average weekly wage of the injured employee at the time of the injury shall be taken as the basis upon which to compute compensation and shall be determined as follows:

(a) If the injured employee shall have worked in the employment in which he was working at the time of the injury, whether for the same or another employer, during substantially the whole of the year immediately preceding his injury, his average annual earnings shall consist of three hundred times the average daily wage or salary which he shall have earned in such employment during the days when so employed.

(b) If the injured employee shall not have worked in such employment during substantially the whole of such year, his average annual earnings shall consist of three hundred times the average daily wage or salary which an employee of the same class working substantially the whole of such immediately preceding year in the same or in similar employment in the same or a neighboring place shall have earned in such employment during the days when so employed.

(c) If either of the foregoing methods of arriving at the annual average earnings of an injured employee can not reasonably and fairly be applied, such annual earnings shall be such sum as, having regard to the previous earnings of the injured employee and of other employees of the same or most similar class, working in the same or most similar employment in the same or neighboring locality, shall reasonably represent the annual earning capacity of the injured employee in the employment in which he was working at the time of the injury.

(d) The average weekly wages of an employee shall be one fifty-second part of his average annual earnings.

(e) If it be established that the injured employee was a minor when injured, and that under normal conditions his wages should be expected to increase during the period of disability the fact may be considered in arriving at his average weekly wages.

GUARDIAN FOR MINOR OR INCOMPETENT

SEC. 11. The deputy commissioner may require the appointment by a court of competent jurisdiction, for any person who is mentally

incompetent or a minor, of a guardian or other representative to receive compensation payable to such person under this Act and to exercise the powers granted to or to perform the duties required of such person under this Act.

NOTICE OF INJURY OR DEATH

SEC. 12. (a) Notice of an injury or death in respect of which compensation is payable under this Act shall be given within thirty days after the date of such injury or death (1) to the deputy commissioner in the compensation district in which such injury occurred and (2) to the employer.

(b) Such notice shall be in writing, shall contain the name and address of the employee and a statement of the time, place, nature, and cause of the injury or death, and shall be signed by the employee or by some person on his behalf, or in case of death, by any person claiming to be entitled to compensation for such death or by a person on his behalf.

(c) Notice shall be given to the deputy commissioner by delivering it to him or sending it by mail addressed to his office, and to the employer by delivering it to him or by sending it by mail addressed to him at his last known place of business. If the employer is a partnership, such notice may be given to any partner, or if a corporation, such notice may be given to any agent or officer thereof upon whom legal process may be served or who is in charge of the business in the place where the injury occurred.

(d) Failure to give such notice shall not bar any claim under this Act (1) if the employer (or his agent in charge of the business in the place where the injury occurred) or the carrier had knowledge of the injury or death and the deputy commissioner determines that the employer or carrier has not been prejudiced by failure to give such notice, or (2) if the deputy commissioner excuses such failure on the ground that for some satisfactory reason such notice could not be given; nor unless objection to such failure is raised before the deputy commissioner at the first hearing of a claim for compensation in respect of such injury or death.

TIME FOR FILING OF CLAIMS

SEC. 13. (a) The right to compensation for disability under this Act shall be barred unless a claim therefor is filed within one year after the injury, and the right to compensation for death shall be barred unless a claim therefor is filed within one year after the death, except that if payment of compensation has been made without an award on account of such injury or death a claim may be filed within one year after the date of the last payment. Such claim shall be filed with the deputy commissioner in the compensation district in which such injury or such death occurred.

(b) Notwithstanding the provisions of subdivision (a) failure to file a claim within the period prescribed in such subdivision shall not be a bar to such right unless objection to such failure is made at the first hearing of such claim in which all parties in interest are given reasonable notice and opportunity to be heard.

(c) If a person who is entitled to compensation under this Act is mentally incompetent of a minor, the provisions of subdivision (a) shall not be applicable so long as such person has no guardian or other authorized representative, but shall be applicable in the case of a person who is mentally incompetent or a minor from the date of appointment of such guardian or other representative, or in the case of a minor, if no guardian is appointed before he becomes of age, from the date he becomes of age.

(d) Where recovery is denied to any person, in a suit brought at law or in admiralty to recover damages in respect of injury or death, on the ground that such person was an employee and that the defendant was an employer within the meaning of this Act and that such employer had secured compensation to such employee under this Act, the limitation of time prescribed in subdivision (a) shall begin to run only from the date of termination of such suit.

PAYMENT OF COMPENSATION

SEC. 14. (a) Compensation under this Act shall be paid periodically, promptly, and directly to the person entitled thereto, without an award, except where liability to pay compensation is controverted by the employer.

(b) The first installment of compensation shall become due on the fourteenth day after the employer has knowledge of the injury or death, on which date all compensation then due shall be paid. Thereafter compensation shall be paid in installments, semimonthly, except where the deputy commissioner determines that payment in installments should be made monthly or at some other period.

(c) Upon making the first payment, and upon suspension of payment for any cause, the employer shall immediately notify the deputy commissioner, in accordance with a form prescribed by the commission, that payment of compensation has begun or has been suspended, as the case may be.

(d) If the employer controverts the right to compensation he shall file with the deputy commissioner on or before the fourteenth day after he has knowledge of the alleged injury or death, a notice, in accordance with a form prescribed by the commission, stating that the right to compensation is controverted, the name of the claimant, the name of the employer, the date of the alleged injury or death, and the grounds upon which the right to compensation is controverted.

(e) If any installment of compensation payable without an award is not paid within fourteen days after it becomes due, as provided in subdivision (b) of this section, there shall be added to such unpaid installment an amount equal to 10 per centum thereof, which shall be paid at the same time as, but in addition to, such installment, unless notice is filed under subdivision (d) of this section, or unless such nonpayment is excused by the deputy commissioner after a showing by the employer that owing to conditions over which he had no control such installment could not be paid within the period prescribed for the payment.

(f) If any compensation, payable under the terms of an award, is not paid within ten days after it becomes due, there shall be added to such unpaid compensation an amount equal to 20 per centum thereof, which shall be paid at the same time as but in addition to

such compensation, unless review of the compensation order making such award is had as provided in section 21.

(g) Within sixteen days after final payment of compensation has been made, the employer shall send to the deputy commissioner a notice, in accordance with a form prescribed by the commission, stating that such final payment has been made, the total amount of compensation paid, the name of the employee and of any other person to whom compensation has been paid, the date of the injury or death, and the date to which compensation has been paid. If the employer fails to so notify the deputy commissioner within such time the commission shall assess against such employer a civil penalty in the amount of $100.

(h) The deputy commissioner (1) may upon his own initiative at any time in a case in which payments are being made without an award, and (2) shall in any case where right to compensation is controverted, or where payments of compensation have been stopped or suspended, upon receipt of notice from any person entitled to compensation, or from the employer, that the right to compensation is controverted, or that payments of compensation have been stopped or suspended, make such investigations, cause such medical examinations to be made, or hold such hearings, and take such further action as he considers will properly protect the rights of all parties.

(i) Whenever the deputy commissioner deems it advisable he may require any employer to make a deposit with the Treasurer of the United States to secure the prompt and convenient payment of such compensation, and payments therefrom upon any awards shall be made upon order of the deputy commissioner.

(j) Whenever the deputy commissioner determines that it is for the best interests of a person entitled to compensation, the liability of the employer for such compensation may be discharged by the payment of a lump sum equal to the present value of all future payments of compensation computed at 4 per centum true discount compounded annually. The probability of the death of the injured employee or other person entitled to compensation before the expiration of the period during which he is entitled to compensation shall be determined in accordance with the American Experience Table of Mortality. The probability of the happening of any other contingency affecting the amount or duration of the compensation shall be disregarded.

(k) If the employer has made advance payments of compensation, he shall be entitled to be reimbursed out of any unpaid installment or installments of compensation due.

(l) An injured employee, or in case of death his dependents or personal representative, shall give receipts for payment of compensation to the employer paying the same and such employer shall produce the same for inspection by the deputy commissioner, whenever required.

(m) The total compensation payable under this Act for injury or death shall in no event exceed the sum of $7,500.

INVALID AGREEMENTS

SEC. 15. (a) No agreement by an employee to pay any portion of premium paid by his employer to a carrier or to contribute to a

benefit fund or department maintained by such employer for the purpose of providing compensation or medical services and supplies as required by this Act shall be valid, and any employer who makes a deduction for such purpose from the pay of any employee entitled to the benefits of this Act shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than $1,000.

(b) No agreement by an employee to waive his right to compensation under this Act shall be valid.

ASSIGNMENT AND EXEMPTION FROM CLAIMS OF CREDITORS

SEC. 16. No assignment, release, or commutation of compensation or benefits due or payable under this Act, except as provided by this Act, shall be valid, and such compensation and benefits shall be exempt from all claims of creditors and from levy, execution, and attachment or other remedy for recovery or collection of a debt, which exemption may not be waived.

COMPENSATION A LIEN AGAINST ASSETS

SEC. 17. Compensation shall have the same preference of lien against the assets of the carrier or employer without limit of amount as is now or may hereafter be allowed by law to the claimant for unpaid wages or otherwise.

COLLECTION OF DEFAULTED PAYMENTS

SEC. 18. In case of default by the employer in the payment of compensation due under any award of compensation for a period of thirty days after the compensation is due and payable, the person to whom such compensation is payable may, within one year after such default, make application to the deputy commissioner making the compensation order or a supplementary order declaring the amount of the default. After investigation, notice, and hearing, as provided in section 19, the deputy commissioner shall make a supplementary order, declaring the amount of the default, which shall be filed in the same manner as the compensation order. In case the payment in default is an installment of the award, the deputy commissioner may, in his discretion, declare the whole of the award as the amount in default. The applicant may file a certified copy of such supplementary order with the clerk of the Federal district court for the judicial district in which the employer has his principal place of business or maintains an office, or for the judicial district in which the injury occurred. In case such principal place of business or office or place where the injury occurred is in the District of Columbia, a copy of such supplementary order may be filed with the clerk of the Supreme Court of the District of Columbia. Such supplementary order of the deputy commissioner shall be final, and the court shall upon the filing of the copy enter judgment for the amount declared in default by the supplementary order if such supplementary order is in accordance with law. Review of the judgment so entered may be had as in civil suits for damages at common law. Final proceedings to execute the judgment may be had by writ of execution in the form used by the court in suits at common law in actions of

assumpsit. No fee shall be required for filing the supplementary order nor for entry of judgment thereon, and the applicant shall not be liable for costs in a proceeding for review of the judgment unless the court shall otherwise direct. The court shall modify such judgment to conform to any later compensation order upon presentation of a certified copy thereof to the court.

PROCEDURE IN RESPECT OF CLAIMS

SEC. 19. (a) Subject to the provisions of section 13 a claim for compensation may be filed with the deputy commissioner in accordance with regulations prescribed by the commission at any time after the first seven days of disability following any injury, or at any time after death, and the deputy commissioner shall have full power and authority to hear and determine all questions in respect of such claim.

(b) Within ten days after such claim is filed the deputy commissioner, in accordance with regulations prescribed by the commission, shall notify the employer and any other person (other than the claimant), whom the deputy commissioner considers an interested party, that a claim has been filed. Such notice may be served personally upon the employer or other person, or sent to such employer or person by registered mail.

(c) The deputy commissioner shall make or cause to be made such investigations as he considers necessary in respect of the claim, and upon application of any interested party shall order a hearing thereon. If a hearing on such claim is ordered the deputy commissioner shall give the claimant and other interested parties at least ten days' notice of such hearing, served personally upon the claimant and other interested parties or sent to such claimant and other interested parties by registered mail, and shall within twenty days after such hearing is had, by order, reject the claim or make an award in respect of the claim. If no hearing is ordered within twenty days after notice is given as provided in subdivision (b), the deputy commissioner shall, by order, reject the claim or make an award in respect of the claim.

(d) At such hearing the claimant and the employer may each present evidence in respect of such claim and may be represented by any person authorized in writing for such purpose.

(e) The order rejecting the claim or making the award (referred to in this Act as a compensation order) shall be filed in the office of the deputy commissioner, and a copy thereof shall be sent by registered mail to the claimant and to the employer at the last known address of each.

(f) An award of compensation for disability may be made after the death of an injured employee.

(g) After a compensation order has issued in any case the deputy commissioner may transfer such case to any other deputy commissioner for the purpose of taking testimony or making physical examinations.

(h) An injured employee claiming or entitled to compensation shall submit to such physical examination by a medical officer of the United States or by a duly qualified physician designated or approved by the commission as the deputy commissioner may require.

The place or places shall be reasonably convenient for the employee. Such physician or physicians as the employee, employer, or carrier may select and pay for may participate in an examination if the employee, employer, or carrier so requests. Proceedings shall be suspended and no compensation be payable for any period during which the employee may refuse to submit to examination.

PRESUMPTIONS

SEC. 20. In any proceeding for the enforcement of a claim for compensation under this Act it shall be presumed, in the absence of substantial evidence to the contrary—

(a) That the claim comes within the provisions of this Act.

(b) That sufficient notice of such claim has been given.

(c) That the injury was not occasioned solely by the intoxication of the injured employee.

(d) That the injury was not occasioned by the willful intention of the injured employee to injure or kill himself or another.

REVIEW OF COMPENSATION ORDERS

SEC. 21. (a) A compensation order shall become effective when filed in the office of the deputy commissioner as provided in section 19, and, unless proceedings for the suspension or setting aside of such order are instituted as provided in subdivision (b) of this section, shall become final at the expiration of the thirtieth day thereafter.

(b) If not in accordance with law, a compensation order may be suspended or set aside, in whole or in part, through injunction proceedings, mandatory or otherwise, brought by any party in interest against the deputy commissioner making the order, and instituted in the Federal district court for the judicial district in which the injury occurred (or in the Supreme Court of the District of Columbia if the injury occurred in the District). The orders, writs, and processes of the court in such proceedings may run, be served, and be returnable anywhere in the United States. The payment of the amounts required by an award shall not be stayed pending final decision in any such proceeding unless upon application for an interlocutory injunction the court, on hearing, after not less than three days' notice to the parties in interest and the deputy commissioner, allows the stay of such payments, in whole or in part, where irreparable damage would otherwise ensue to the employer. The order of the court allowing any such stay shall contain a specific finding, based upon evidence submitted to the court and identified by reference thereto, that such irreparable damage would result to the employer, and specifying the nature of the damage.

(c) If any employer or his officers or agents fails to comply with a compensation order making an award, that has become final, any beneficiary of such award or the deputy commissioner making the order, may apply for the enforcement of the order to the Federal district court for the judicial district in which the injury occurred (or to the Supreme Court of the District of Columbia if the injury occurred in the District). If the court determines that the order was made and served in accordance with law, and that such employer

or his officers or agents have failed to comply therewith, the court shall enforce obedience to the order by writ of injunction or by other proper process, mandatory or otherwise, to enjoin upon such person and his officers and agents compliance with the order.

(d) Proceedings for suspending, setting aside, or enforcing a compensation order, whether rejecting a claim or making an award, shall not be instituted otherwise than as provided in this section and section 18.

MODIFICATION OF AWARDS

SEC. 22. Upon his own initiative, or upon application of any party in interest, on the ground of a change in conditions, the deputy commissioner may at any time during the term of an award and after the compensation order in respect of such award has become final, review such order in accordance with the procedure prescribed in respect of claims in section 19, and in accordance with such section issue a new compensation order which may terminate, continue, increase, or decrease such compensation. Such new order shall not affect any compensation paid under authority of the prior order.

PROCEDURE BEFORE THE DEPUTY COMMISSIONER

SEC. 23. (a) In making an investigation or inquiry or conducting a hearing the deputy commissioner shall not be bound by common law or statutory rules of evidence or by technical or formal rules of procedure, except as provided by this Act; but may make such investigation or inquiry or conduct such hearing in such manner as to best ascertain the rights of the parties. Declarations of a deceased employee concerning the injury in respect of which the investigation or inquiry is being made or the hearing conducted shall be received in evidence and shall, if corroborated by other evidence, be sufficient to establish the injury.

(b) Hearings before a deputy commissioner shall be open to the public and shall be stenographically reported, and the deputy commissioners, subject to the approval of the commission, are authorized to contract for the reporting of such hearings. The commission shall by regulation provide for the preparation of a record of the hearings and other proceedings before the deputy commissioners.

WITNESSES

SEC. 24. No person shall be required to attend as a witness in any proceeding before a deputy commissioner at a place outside of the State of his residence and more than one hundred miles from his place of residence, unless his lawful mileage and fee for one day's attendance shall be first paid or tendered to him; but the testimony of any witness may be taken by deposition or interrogatories according to the rules of practice of the Federal district court for the judicial district in which the case is pending (or of the Supreme Court of the District of Columbia if the case is pending in the District).

WITNESS FEES

SEC. 25. Witnesses summoned in a proceeding before a deputy commissioner or whose depositions are taken shall receive the same fees and mileage as witnesses in courts of the United States.

COSTS IN PROCEEDINGS BROUGHT WITHOUT REASONABLE GROUNDS

SEC. 26. If the court having jurisdiction of proceedings in respect of any claim or compensation order determines that the proceedings in respect of such claim or order have been instituted or continued without reasonable ground, the costs of such proceedings shall be assessed against the party who has so instituted or continued such proceedings.

POWERS OF DEPUTY COMMISSIONERS

SEC. 27. (a) The deputy commissioner shall have power to preserve and enforce order during any such proceedings; to issue subpœnas for, to administer oaths to, and to compel the attendance and testimony of witnesses, or the production of books, papers, documents, and other evidence, or the taking of depositions before any designated individual competent to administer oaths; to examine witnesses; and to do all things conformable to law which may be necessary to enable him effectively to discharge the duties of his office.

(b) If any person in proceedings before a deputy commissioner disobeys or resists any lawful order or process, or misbehaves during a hearing or so near the place thereof as to obstruct the same, or neglects to produce, after having been ordered to do so, any pertinent book, paper, or document, or refuses to appear after having been subpœnaed, or upon appearing refuses to take the oath as a witness, or after having taken the oath refuses to be examined according to law, the deputy commissioner shall certify the facts to the district court having jurisdiction in the place in which he is sitting (or to the Supreme Court of the District of Columbia if he is sitting in such District) which shall thereupon in a summary manner hear the evidence as to the acts complained of, and, if the evidence so warrants, punish such person in the same manner and to the same extent as for a contempt committed before the court, or commit such person upon the same conditions as if the doing of the forbidden act had occurred with reference to the process of or in the presence of the court.

FEES FOR SERVICES

SEC. 28. (a) No claim for legal services or for any other services rendered in respect of a claim or award for compensation, to or on account of any person, shall be valid unless approved by the deputy commissioner, or if proceedings for review of the order of the deputy commissioner in respect of such claim or award are had before any court, unless approved by such court. Any claim so approved shall, in the manner and to the extent fixed by the deputy commissioner or such court, be a lien upon such compensation.

(b) Any person (1) who receives any fee, other consideration, or any gratuity on account of services so rendered, unless such consideration or gratuity is approved by the deputy commissioner or such court, or (2) who makes it a business to solicit employment for a lawyer or for himself in respect of any claim or award for compensation, shall be guilty of a misdemeanor, and upon conviction thereof, shall, for each offense, be punished by a fine of not more than $1,000 or by imprisonment not to exceed one year, or by both such fine and imprisonment.

RECORD OF INJURY OR DEATH

SEC. 29. Every employer shall keep a record in respect of any injury to an employee. Such record shall contain such information of disease, other disability, or death in respect of such injury as the commission may by regulation require, and shall be available to inspection by the commission or by any State authority at such times and under such conditions as the commission may by regulation prescribe.

REPORTS

SEC. 30. (a) Within ten days from the date of any injury or death or from the date that the employer has knowledge of a disease or infection in respect of such injury, the employer shall send to the commission a report setting forth (1) the name, address, and business of the employer; (2) the name, address, and occupation of the employee; (3) the cause and nature of the injury or death; (4) the year, month, day, and hour when and the particular locality where the injury or death occurred; and (5) such other information as the commission may require. A copy of such report shall be sent at the same time to the deputy commissioner in the compensation district in which the injury occurred.

(b) Additional reports in respect of such injury and of the condition of such employee shall be sent by the employer to the commission and to such deputy commissioner at such times and in such manner as the commission may prescribe.

(c) Any report provided for in subdivision (a) or (b) shall not be evidence of any fact stated in such report in any proceeding in respect of such injury or death on account of which the report is made.

(d) The mailing of any such report and copy in a stamped envelope, within the time prescribed in subdivisions (a) or (b), to the commission and deputy commissioner, respectively, shall be a compliance with this section.

(e) Any employer who fails or refuses to send any report required of him by this section shall be subject to a civil penalty not to exceed $500 for each such failure or refusal.

PENALTY FOR MISREPRESENTATION

SEC. 31. Any person who willfully makes any false or misleading statement or representation for the purpose of obtaining any benefit or payment under this Act shall be guilty of a misdemeanor and on conviction thereof shall be punished by a fine of not to exceed $1,000 or by imprisonment of not to exceed one year, or by both such fine and imprisonment.

SECURITY FOR COMPENSATION

SEC. 32. (a) Every employer shall secure the payment of compensation under this Act—

(1) By insuring and keeping insured the payment of such compensation with any stock company or mutual company or association,

or with any other person or fund, while such person or fund is authorized (A) under the laws of the United States or of any State, to insure workmen's compensation, and (B) by the commission, to insure payment of compensation under this Act; or

(2) By furnishing satisfactory proof to the commission of his financial ability to pay such compensation and receiving an authorization from the commission to pay such compensation directly. The commission may, as a condition to such authorization, require such employer to deposit in a depository designated by the commission either an indemnity bond or securities (at the option of the employer) of a kind and in an amount determined by the commission, and subject to such conditions as the commission may prescribe, which shall include authorization to the commission in case of default to sell any such securities sufficient to pay compensation awards or to bring suit upon such bonds, to procure prompt payment of compensation under this Act. Any employer securing compensation in accordance with the provisions of this paragraph shall be known as a self-insurer.

(b) In granting authorization to any carrier to insure payment of compensation under this Act the commission may take into consideration the recommendation of any State authority having supervision over carriers or over workmen's compensation, and may authorize any carrier to insure the payment of compensation under this Act in a limited territory. Any marine protection and indemnity mutual insurance corporation or association, authorized to write insurance against liability for loss or damage from personal injury and death, and for other losses and damages, incidental to or in respect of the ownership, operation, or chartering of vessels on a mutual assessment plan, shall be deemed a qualified carrier to insure compensation under this Act. The commission may suspend or revoke any such authorization for good cause shown after a hearing at which the carrier shall be entitled to be heard in person or by counsel and to present evidence. No suspension or revocation shall affect the liability of any carrier already incurred.

COMPENSATION FOR INJURIES WHERE THIRD PERSONS ARE LIABLE

SEC. 33. (a) If on account of a disability or death for which compensation is payable under this Act the person entitled to such compensation determines that some person other than the employer is liable in damages, he may elect, by giving notice to the deputy commissioner in such manner as the commission may provide, to receive such compensation or to recover damages against such third person.

(b) Acceptance of such compensation shall operate as an assignment to the employer of all right of the person entitled to compensation to recover damages against such third person, whether or not the person entitled to compensation has notified the deputy commissioner of his election.

(c) The payment of such compensation into the fund established in section 44 shall operate as an assignment to the employer of all right of the legal representative of the deceased (hereinafter referred to as "representative") to recover damages against such third

person, whether or not the representative has notified the deputy commissioner of his election.

(d) Such employer on account of such assignment may either institute proceedings for the recovery of such damages or may compromise with such third person either without or after instituting such proceeding.

(e) Any amount recovered by such employer on account of such assignment, whether or not as the result of a compromise, shall be distributed as follows:

(1) The employer shall retain an amount equal to—

(A) The expenses incurred by him in respect of such proceedings or compromise (including a reasonable attorney's fee as determined by the deputy commissioner).

(B) The cost of all benefits actually furnished by him to the employee under section 7.

(C) All amounts paid as compensation, and the present value of all amounts payable as compensation, such present value to be computed in accordance with a schedule prepared by the commission, and the amounts so computed to be retained by the employer as a trust fund to pay such compensation as it becomes due and to pay any sum, in excess of such compensation, to the person entitled to compensation or to the representative; and

(2) The employer shall pay any excess to the person entitled to compensation or to the representative.

(f) If the person entitled to compensation or the representative elects to recover damages against such third person and notifies the commission of his election and institutes proceedings within the period prescribed in section 13, the employer shall be required to pay as compensation under this Act a sum equal to the excess of the amount which the commission determines is payable on account of such injury or death over the amount recovered against such third person.

(g) If a compromise with such third person is made by the person entitled to compensation or such representative of an amount less than the compensation to which such person or representative would be entitled to under this Act, the employer shall be liable for compensation as determined in subdivision (e) only if such compromise is made with his written approval.

(h) The deputy commissioner may, if the person entitled to compensation under this Act is a minor, make any election required under subdivision (a) of this section, or may authorize the parent or guardian of the minor to make such election.

COMPENSATION NOTICE

SEC. 34. Every employer who has secured compensation under the provisions of this Act shall keep posted in a conspicuous place or places in and about his place or places of business typewritten or printed notices, in accordance with a form prescribed by the commission, stating that such employer has secured the payment of compensation in accordance with the provisions of this Act. Such notices shall contain the name and address of the carrier, if any, with whom the employer has secured payment of compensation and the date of the expiration of the policy.

SUBSTITUTION OF CARRIER FOR EMPLOYER

SEC. 35. In any case where the employer is not a self-insurer, in order that the liability for compensation imposed by this Act may be most effectively discharged by the employer, and in order that the administration of this Act in respect of such liability may be facilitated, the commission shall by regulation provide for the discharge, by the carrier for such employer, of such obligations and duties of the employer in respect of such liability, imposed by this Act upon the employer, as it considers proper in order to effectuate the provisions of this Act. For such purposes (1) notice to or knowledge of an employer of the occurrence of the injury shall be notice to or knowledge of the carrier, (2) jurisdiction of the employer by a deputy commissioner, the commission, or any court under this Act shall be jurisdiction of the carrier, and (3) any requirement by a deputy commissioner, the commission, or any court under any compensation order, finding, or decision shall be binding upon the carrier in the same manner and to the same extent as upon the employer.

INSURANCE POLICIES

SEC. 36. (a) Every policy or contract of insurance issued under authority of this Act shall contain (1) a provision to carry out the provisions of section 35, and (2) a provision that insolvency or bankruptcy of the employer and/or discharge therein shall not relieve the carrier from payment of compensation for disability or death sustained by an employee during the life of such policy or contract.

(b) No contract or policy of insurance issued by a carrier under this Act shall be canceled prior to the date specified in such contract or policy for its expiration until at least thirty days have elapsed after a notice of cancellation has been sent to the deputy commissioner and to the employer in accordance with the provisions of subdivision (c) of section 12.

CERTIFICATE OF COMPLIANCE WITH THIS ACT

SEC. 37. No stevedoring firm shall be employed in any compensation district by a vessel or by hull owners until it presents to such vessel or hull owners a certificate issued by a deputy commissioner assigned to such district that it has complied with the provisions of this Act requiring the securing of compensation to its employees. Any person violating the provisions of this section shall be punished by a fine of not more than $1,000, or by imprisonment for not more than one year, or by both such fine and imprisonment.

PENALTY FOR FAILURE TO SECURE PAYMENT OF COMPENSATION

SEC. 38. Any employer required to secure the payment of compensation under this act who fails to secure such compensation shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than $1,000, or by imprisonment for not more than one year, or by both such fine and imprisonment.

This section shall not affect any other liability of the employer under this Act.

ADMINISTRATION

SEC. 39. (a) Except as otherwise specifically provided, the United States Employees' Compensation Commission shall administer the provisions of this Act, and for such purpose the commission is authorized (1) to make such rules and regulations; (2) to appoint and fix the compensation of such temporary technical assistants and medical advisers, and, subject to the provisions of the civil service laws, to appoint, and, in accordance with the Classification Act of 1923, to fix the compensation of such deputy commissioners (except deputy commissioners appointed under subdivision (a) of section 40) and other officers and employees; and (3) to make such expenditures (including expenditures for personal services and rent at the seat of government and elsewhere, for law books, books of reference, periodicals, and for printing and binding) as may be necessary in the administration of this Act. All expenditures of the commission in the administration of this Act shall be allowed and paid as provided in section 45 upon the presentation of itemized vouchers therefor approved by the commission.

(b) The commission shall establish compensation districts, to include the high seas and the areas within the United States to which this Act applies, and shall assign to each such district one or more deputy commissioners, as the commission deems advisable. Judicial proceedings under sections 18 and 21 of this Act in respect of any injury or death occurring on the high seas shall be instituted in the district court within whose territorial jurisdiction is located the office of the deputy commissioner having jurisdiction in respect of such injury or death (or in the Supreme Court of the District of Columbia if such office is located in such District).

(c) The commission shall direct the vocational rehabilitation of permanently disabled employees and shall arrange with the appropriate public or private agencies in States or Territories, possessions, or the District of Columbia for such education. The Federal Board for Vocational Education shall cooperate with the commission in such educational work. The commission may in its discretion furnish such prosthetic appliances or other apparatus made necessary by an injury upon which an award has been made under this Act to render a disabled employee fit to engage in a remunerative occupation. If any surplus is left in any fiscal year in the fund provided for in section 44, such surplus may be used in subsequent fiscal years for the purposes of this section except for the purposes of administration and investigation.

DEPUTY COMMISSIONERS

SEC. 40. (a) The commission may appoint as deputy commissioners any member of any board, commission, or other agency of a State to act as deputy commissioner for any compensation district or part thereof in such State, and may make arrangements with such board, commission, or other agency for the use of the personnel and facilities thereof in the administration of this Act. The

commission may make such arrangements as may be deemed advisable by it for the payment of expenses of such board, commission, or other agency, incurred in the administration of this Act pursuant to this section, and for the payment of salaries to such board, commission, or other agency, or the members thereof, and may pay any amounts agreed upon to the proper officers of the State, upon vouchers approved by the commission.

(b) In any Territory of the United States or in the District of Columbia a person holding an office under the United States may be appointed deputy commissioner and for services rendered as deputy commissioner may be paid compensation, in addition to that he is receiving from the United States, in an amount fixed by the commission in accordance with the Classification Act of 1923.

(c) Deputy commissioners (except deputy commissioners appointed under subdivision (a) of this section) may be transferred from one compensation district to another and may be temporarily detailed from one compensation district for service in another in the discretion of the commission.

(d) Each deputy commissioner shall maintain and keep open during reasonable business hours an office, at a place designated by the commission, for the transaction of business under this Act, at which office he shall keep his official records and papers. Such office shall be furnished and equipped by the commission, who shall also furnish the deputy commissioner with all necessary clerical and other assistants, records, books, blanks, and supplies. Wherever practicable such office shall be located in a building owned or leased by the United States; otherwise the commission shall rent suitable quarters.

(e) If any deputy commissioner is removed from office, or for any reason ceases to act as such deputy commissioner, all of his official records and papers and office equipment shall be transferred to his successor in office or, if there be no successor, then to the commission or to a deputy commissioner designated by the commission.

(f) Neither a deputy commissioner nor any business associate of a deputy commissioner shall appear as attorney in any proceeding under this Act, and no deputy commissioner shall act in any such case in which he is interested, or when he is employed by any party in interest or related to any party in interest by consanguinity or affinity within the third degree, as determined by the common law.

INVESTIGATIONS BY THE COMMISSION

SEC. 41. (a) The commission shall make studies and investigations with respect to safety provisions and the causes of injuries in employments covered by this Act, and shall from time to time make to Congress and to employers and carriers such recommendations as it may deem proper as to the best means of preventing such injuries.

(b) In making such studies and investigations the commission is authorized (1) to cooperate with any agency of the United States charged with the duty of enforcing any law securing safety against injury in any employment covered by this Act, or with any State

agency, engaged in enforcing any laws to assure safety for employees, and (2) to permit any such agency to have access to the records of the commission. In carrying out the provisions of this section the commission or any officer or employee of the commission is authorized to enter at any reasonable time upon any premises, tracks, wharf, dock, or other landing place, or upon any vessel, or to enter any building, where an employment covered by this Act is being carried on, and to examine any tool, appliance, or machinery used in such employment.

TRAVELING EXPENSES

SEC. 42. The commissioners, deputy commissioners, and other employees of the commission shall be entitled to receive their necessary traveling expenses and expenses actually incurred for subsistence while traveling on official business and away from their designated stations, as provided by the Subsistence Expense Act of 1926.

ANNUAL REPORT

SEC. 43. The commission shall make to Congress at the beginning of each regular session a report of the administration of this Act for the preceding fiscal year, including a detailed statement of receipts of and expenditures from the funds established in sections 44 and 45, together with such recommendations as the commission deems advisable.

SPECIAL FUND

SEC. 44. (a) There is hereby established in the Treasury of the United States a special fund for the purpose of making payments in accordance with the provisions of subsections (f) and (g) of section 8 of this Act. Such fund shall be administered by the commission. The Treasurer of the United States shall be the custodian of such fund, and all moneys and securities in such fund shall be held in trust by such Treasurer and shall not be money or property of the United States.

(b) The Treasurer is authorized to disburse moneys from such fund only upon order of the commission. He shall be required to give bond in an amount to be fixed and with securities to be approved by the Secretary of the Treasury and the Comptroller General of the United States conditioned upon the faithful performance of his duty as custodian of such fund.

(c) Payments into such fund shall be made as follows:

(1) Each employer shall pay $1,000 as compensation for the death of an employee of such employer resulting from injury where the deputy commissioner determines that there is no person entitled under this Act to compensation for such death. Fifty per centum of each such payment shall be available for the payments under subdivision (f) of section 8, and 50 per centum shall be available for payments under subdivision (g) of section 8.

(2) All amounts collected as fines and penalties under the provisions of this Act shall be paid into such fund.

(d) The Treasurer of the United States shall deposit any moneys paid into such fund into such depository banks as the commission may designate and may invest any portion of the funds which, in the opinion of the commission, is not needed for current requirements, in bonds or notes of the United States or of any Federal land bank.

(e) Neither the United States nor the commission shall be liable in respect of payments authorized under section 8 in an amount greater than the money or property deposited in or belonging to such fund.

(f) The Comptroller General of the United States shall audit the account for such fund, but the action of the commission in making payments from such fund shall be final and not subject to review, and the Comptroller General is authorized and directed to allow credit in the accounts of any disbursing officer of the commission for payments made from such fund authorized by the commission.

(g) All civil penalties provided for in this Act shall be collected by civil suit brought by the commission.

ADMINISTRATION FUND

SEC. 45. (a) There is hereby established in the Treasury of the United States a special fund for the purpose of providing for the payment of all expenses in respect of the administration of this act. Such fund shall be administered by the commission. The Treasurer of the United States shall be the custodian of such fund, and all moneys and securities in such fund shall be held in trust by such Treasurer and shall not be the money or property of the United States.

(b) The provisions of subdivisions (b), (d), and (f) of section 44 shall be applicable to the fund hereby established.

APPROPRIATION

SEC. 46. (a) There is hereby authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, the sum of $250,000, which shall be covered into the administration fund established in section 45 and shall be available for expenses incurred in the administration of this Act during the remainder of the fiscal year ending June 30, 1927, and during the fiscal year ending June 30, 1928. All unexpended balances of any appropriations made under authority of this section, remaining in such fund on July 1, 1928, shall be covered into the Treasury of the United States as miscellaneous receipts.

AVAILABILITY OF APPROPRIATIONS

SEC. 47. The expenses incurred for salaries and contingent expenses by the United States Employees' Compensation Commission in the administration (1) of the Act entitled "An Act to provide compensation for employees of the United States suffering injuries while in the performance of their duties, and for other purposes," approved

September 7, 1916, as amended, and (2) of this Act, may be paid from the appropriations for salaries and contingent expenses for the administration of such Act of September 7, 1916, and from the fund established in section 45 of this Act, in such proportion as the commission, with the approval of the Director of the Bureau of the Budget, determines to be fairly attributable to the cost of administration of the respective Acts, but the total amount paid from such appropriation and such fund in any fiscal year on account of the administration of such Act of September 7, 1916, shall not exceed the amounts appropriated for salaries and contingent expenses for the administration of such Act for such year.

LAWS INAPPLICABLE

SEC. 48. Nothing in sections 4283, 4284, 4285, 4286, or 4289 of the Revised Statutes, as amended, nor in section 18 of the Act entitled "An act to remove certain burdens on the American merchant marine and encourage the American foreign carrying trade, and for other purposes," approved June 26, 1884, as amended, shall be held to limit the amount for which recovery may be had (1) in any suit at law or in admiralty where an employer has failed to secure compensation as required by this Act, or (2) in any proceeding for compensation, any addition to compensation, or any civil penalty.

EFFECT OF UNCONSTITUTIONALITY

SEC. 49. If any part of this Act is adjudged unconstitutional by the courts, and such adjudication has the effect of invalidating any payment of compensation under this Act, the period intervening between the time the injury was sustained and the time of such adjudication shall not be computed as a part of the time prescribed by law for the commencement of any action against the employer in respect of such injury; but the amount of any compensation paid under this Act on account of such injury shall be deducted from the amount of damages awarded in such action in respect of such injury.

SEPARABILITY PROVISION

SEC. 50. If any provision of this Act is declared unconstitutional or the applicability thereof to any person or circumstances is held invalid, the validity of the remainder of the Act and the applicability of such provision to other persons and circumstances shall not be affected thereby.

EFFECTIVE DATE

SEC. 51. Sections 39 to 51, inclusive, shall become effective upon the passage of this Act, and the remainder of this Act shall become effective on July 1, 1927.

Approved, March 4, 1927.

# INDEX


| | Page |
|---|---|
| Accidents, prevention of, sec. 41 | 22, 23 |
| (*See also* Injuries.) | |
| Act in effect, sec. 51 | 26 |
| Action at law: | |
| Cases determined to be under act, sec. 13 (d) | 10 |
| Costs in proceedings without reasonable grounds, sec. 26 | 16 |
| Employer's failure to insure, sec. 5 | 3 |
| Enforcement of payments, secs. 18, 21 (c) | 12, 13, 14, 15 |
| Third-party cases, sec. 33 (b) | 18, 19 |
| To suspend or set aside orders, sec. 21 (b) | 14 |
| Administration fund, secs. 45, 47 | 24, 25 |
| Admiralty, actions in, when, sec. 5 | 3 |
| Adoption of children, sec. 2 (14), (18) | 2 |
| Advance payments, sec. 14 (k) | 11 |
| Age limits of beneficiaries, sec. 2 (14) | 2 |
| Aliens, nonresident, sec. 9 (g) | 8 |
| Amputation of arm or leg, rating, sec. 8 (c) (15) | 5 |
| Appeals to court, secs. 18, 21 (b), (c) | 12, 13, 14, 15 |
| Appropriation authorized, sec. 45 | 24 |
| Appropriations, apportionment of, sec. 47 | 24, 25 |
| Arising out of and in course of employment, sec. 2 (2) | 1 |
| Arms: | |
| Amputation of, sec. 8 (c) (15) | 5 |
| Loss of both, sec. 8 (a) | 4 |
| Loss of one, sec. 8 (c) (1) | 4 |
| Artificial members, apparatus, etc., to be supplied, secs. 7 (a), 39 (b) | 3, 4, 21 |
| Assaults, horseplay, etc., sec. 2 (2) | 1 |
| Assignments, etc., of claims or awards, secs. 16, 33 (b)-(d) | 12, 18, 19 |
| Assumption of risk, defense abrogated, sec. 5 | 3 |
| Attachments, etc., compensation exempt from, sec. 16 | 12 |
| Attorneys', etc., fees, sec. 28 | 16 |
| Audits of special and administration funds, secs. 44 (f), 45 (b) | 24 |
| Awards. (*See* Compensation.) | |
| Bankruptcy of employer, sec. 36 (a) | 20 |
| Beneficiaries, secs. 2 (14)-(17), 9 (b)-(d), (g) | 2, 7, 8 |
| Binocular vision, loss of, sec. 8 (c) (16) | 5 |
| Blanks. (*See* Commission: Blanks; Forms.) | |
| Board, lodging, etc., as part of wages, sec. 2 (13) | 2 |
| Brothers and sisters as beneficiaries, secs. 2 (14), 9 (d) | 2, 7 |
| Burial. (*See* Funeral.) | |
| Cancellation of insurance contracts, sec. 36 (b) | 20 |
| Carriers: | |
| Assets subject to lien, sec. 17 | 12 |
| Definition of, sec. 2 (5) | 1 |
| May obtain commutation of awards to aliens, sec. 9 (g) | 8 |
| Must be authorized, sec. 32 | 17, 18 |
| Must give notice of cancellation of policies, sec. 36 (b) | 20 |
| Notice to employer binds, sec. 35 | 20 |
| Participation of, in medical examinations, sec. 19 (h) | 13, 14 |
| Certificates of stevedores' compliance, sec. 37 | 20 |
| Child: | |
| Definition of, sec. 2 (14) | 2 |
| Guardians for, secs. 9 (b), 11, 33 (h) | 7, 8, 9, 19 |
| Payments to, secs. 8 (d) (2)-(4), 9 (b), (c), (g) | 5, 6, 7, 8 |
| (*See also* Minors.) | |
| Civil Service and Classification Acts, application of, sec. 39 (a) | 21 |

Claims:
Page
Assignments, exemptions, etc., of, sec. 16 ..... 12
Controversies as to, sec. 14 (i) ..... 10
Failure to file within time fixed not a bar, when, sec. 13 (b) ..... 9
False statements, etc., as to, sec. 31 ..... 17
Hearings on, secs. 19 (c), (d), 23 ..... 13, 15
Investigation of, sec. 19 (c) ..... 13
Notice of filing, sec. 19 (b) ..... 13
Presumptions as to, sec. 20 ..... 14
Procedure as to, secs. 19, 23 ..... 13, 14, 15
Time for filing, secs. 13 (a), 19 (a) ..... 9, 13
Waivers of, sec. 15 (b) ..... 12
Commission:
Accident prevention, cooperative studies, etc., of, sec. 41 ..... 22, 23
Administration fund disbursed by, sec. 45 ..... 24
Administration of Act by, sec. 39 (a) ..... 21
Alien beneficiaries, commutation of payments to, sec. 9 (g) ..... 8
Annual reports of, sec. 43 ..... 23
Benefits in third-party cases, computation of, sec. 33 (f) ..... 19
Blanks, supplies, etc., to be furnished by, sec. 40 (d) ..... 22
Claim procedure, regulation of, sec. 19 (a), (b) ..... 13
Commutation of benefits to alien beneficiaries, sec. 9 (g) ..... 8
Compensation districts, establishment of, sec. 39 (b) ..... 21
Definition of, sec. 2 (6) ..... 1
Deposits by self-insurers, power to require, sec. 32 (a), (2) ..... 17, 18
Deputies, appointment of, secs. 39 (a), 40 (a), (b) ..... 21, 22
Employers' obligations, discharge of by insurance carriers, provisions for, sec. 35 ..... 20
Expenditures by, sec. 39 (a) ..... 21
Expenses of United States Employees' and Longshoremen's Acts, prorating, sec. 47 ..... 24, 25
Forms to be prescribed for—
Employers' notice of compliance with Act, sec. 34 ..... 19
Notices as to controverted claims, sec. 14 (d) ..... 10
Notices as to payments of compensation, sec. 14 (c) ..... 10
Physicians' reports of injury and treatment, sec. 7 (a) ..... 3, 4
Records of injuries, sec. 29 ..... 17
Reports of injuries, sec. 30 ..... 17
Hearings before deputies, records of, sec. 23 (b) ..... 15
Injuries and deaths, reports of, sec. 30 ..... 17
Injuries, causes of, to be studied, sec. 41 ..... 22, 23
Injuries, inspection of records, regulation of, sec. 29 ..... 17
Insurance carriers, authorization of, sec. 32 ..... 17, 18
Insurance carriers, suspension of authorization of, sec. 32 (b) ..... 18
Offices, etc., for deputies, sec. 39 (a) ..... 21
Physicians, examining, designation, etc., of, sec. 19 (h) ..... 13, 14
Power to enter premises, vessels, etc., sec. 41 (b) ..... 22, 23
Present-worth schedules, preparation of, sec. 33 (e), (1) (C) ..... 19
Procedure as to claims, regulation of, sec. 19 (a) (b) ..... 13
Records, access to, by Federal and State agencies, sec. 41 (b) ..... 22, 23
Rehabilitation, cooperation in, sec. 39 (c) ..... 21
Rehabilitation fund, administration of, secs. 8 (g), 39 (c), 44 ..... 6, 21, 23, 24
Safety provisions, studies, recommendations, etc., sec. 41 ..... 22, 23
Salaries of officers and employees, sec. 39 (a) ..... 21
Second-injury fund, administration of, secs. 8 (f) (1), 44 ..... 6, 23, 24
Self-insurers, authorization of, sec. 32 ..... 17, 18
Self-insurers, deposits by, sec. 32 (a) (2) ..... 18
Temporary assistants, technical and medical, appointment, etc., of, sec. 39 (a) ..... 21
Third party cases, computation of benefits in, sec. 33 (f) ..... 19
Traveling, etc., expenses of, sec. 42 ..... 23
Vocational rehabilitation. (*See* Rehabilitation.)
Common-law defenses, abrogation of, sec. 5 ..... 4
Commutation of awards. (*See* Compensation.)
Compensation:
Additional in case of delayed payments, sec. 14 (e) (f) ..... 10, 11
Advance payments, sec. 14 (k) ..... 11
Aliens, nonresident, sec. 9 (g) ..... 8
Amount weekly—
For death, sec. 9 (e) ..... 7
For disability, sec. 6 (b) ..... 5

| Compensation—Continued. | Page |
|---|---|
| Assignments, attachments, etc., exemption from, sec. 16 | 12 |
| Awards, disability, may be made after death, secs. 8 (d) (5), 19 (f) | 6, 13 |
| Awards effective, when, secs. 19 (e), 21 (a) | 13, 14 |
| Basis for, wages as, sec. 10 | 8 |
| Claims for. (*See* Claims.) | |
| Commutation of awards, secs. 9 (g), 14 (j), 16, 33 (e) (1) (C) | 8, 11, 12, 19 |
| Definition of, sec. 2 (12) | 3 |
| Delinquent installments, secs. 14 (e) (f), 18, 21 (c) | 10, 11, 12, 13, 14, 15 |
| Deposits to secure payment, sec. 14 (l) | 11 |
| Disfigurement, sec. 8 (c) (20) | 5 |
| Election to sue if employer not insured, sec. 5 | 3 |
| Enforcement of payments of, secs. 18, 21 (c), (d) | 12, 13, 14, 15 |
| Exemptions, sec. 16 | 12 |
| Filing orders in district courts, sec. 18 | 12, 13 |
| Final payment, notice of, sec. 14 (g) | 11 |
| First installments, payment, and notice, sec. 14 (b), (c) | 10 |
| For death, sec. 9 (a)–(s), (g) | 7, 8 |
| For disability— | |
| Permanent partial— | |
| Schedule, sec. 8 (c) (1)–(19) | 4, 5 |
| Nonschedule, sec. 8 (c) (21) | 5 |
| Permanent total, sec. 8 (a) | 4 |
| Resulting from second injury, sec. 8 (f) | 6 |
| Temporary partial, sec. 8 (e) | 6 |
| Temporary total, sec. 8 (b) | 4 |
| Injunction to suspend awards, sec. 21 (b) | 14 |
| Lien preference, sec. 17 | 12 |
| Lump sum payments. (*See* Commutation.) | |
| Maximum total, sec. 14 (m) | 11 |
| Minimum and maximum payments, secs. 8 (b), 9 (e) | 3, 7 |
| Modification of awards, sec. 22 | 15 |
| Nonschedule injuries, sec. 8 (b), (c) (21), (e) | 4–6 |
| Notice by employers, of securing, sec. 34 | 19 |
| Notice of final payment, sec. 14 (g) | 11 |
| Orders, suspension, enforcement, etc., of, secs. 18, 21 | 12, 13, 14, 15 |
| Payable without award, sec. 14 (a) | 10 |
| Payment of, sec. 14 | 10, 11 |
| Receipts for payment, sec. 14 (l) | 11 |
| Review of orders for, secs. 18, 21, 22 | 12, 13, 14, 15 |
| Schedule of, for specific injuries, sec. 8 (c) | 4, 5 |
| Security for, secs. 14 (l), 17, 32 | 11, 12, 17, 18 |
| Stay of payments pending decision on appeal, when, sec. 21 (b) | 14 |
| Suits for damages in lieu of, when, sec. 5 | 3 |
| Supplementary orders for, sec. 18 | 12, 13 |
| Third-party cases. (*See* Third party.) | |
| Time for rendering decision, sec. 19 (c) | 13 |
| Uninsured employers, sec. 5 | 3 |
| Vested interest in, sec. 8 (d) | 5, 6 |
| Wage basis, computation of, sec. 10 | 8 |
| Waiting time covered, when, sec. 6 (a) | 3 |
| Weekly minimum and maximum payments, secs. 8 (b), 9 (e) | 3, 7 |
| When payable, secs. 3 (a) (b), 4 (b), 6 (a), 14 (a), (b) | 2, 3, 10 |
| Compensation districts, sec. 39 (b) | 21 |
| Compromises in third-party cases, sec. 33 (d)–(g) | 19 |
| Computation of commuted awards, sec. 14 (j) | 11 |
| Computation of earnings, sec. 10 | 8 |
| Contempt, punishment as for, when, sec. 27 (b) | 16 |
| Contractors and subcontractors, liability of, sec. 4 (a) | 3 |
| Courts. (*See* Actions at law.) | |
| Coverage, secs. 2 (3), (4), 3 (a), (1), (2) | 1, 2 |
| Crews of vessels, secs. 2 (3), 3 (a) (1) | 1, 2 |
| Crutches, etc., duty of employer as to, sec. 7 (a) | 3 |
| Damages, suits for, when, sec. 5 | 3 |

Page

Death:
- Before award of disability benefits, secs. 8 (d) (5), 19 (f) ... 6, 18
- Compensation for, sec. 9 (a)–(e), (g) ... 7, 8
- Definition of, sec. 2 (11) ... 1
- Notice of, sec. 12 ... 9
- While receiving schedule benefits, sec. 8 (d) (1), (2), (4) ... 5, 6
- Without dependents, sec. 44 (c) (1)) ... 22

Defenses abrogated, sec. 5 ... 3

Definitions:
- Accident, sec. 2 (2) ... 1
- Adoption or adopted, sec. 2 (18) ... 2
- Amputation of hand, foot, etc., sec. 8 (c) (15) ... 4
- Brother, sec. 2 (14) ... 2
- Carrier, sec. 2 (5) ... 1
- Child, sec. 2 (14) ... 2
- Commission, sec. 2 (6) ... 1
- Compensation, sec. 2 (12) ... 2
- Death, sec. 2 (11) ... 1
- Death benefit, sec. 9 ... 7
- Deputy commissioner, sec. 2 (7) ... 1
- Disability, sec. 2 (10) ... 1
- Disability, permanent total, sec. 8 (a) ... 4
- Employee, sec. 2 (3) ... 1
- Employer, sec. 2 (4) ... 1
- Grandchild, sec. 2 (14) ... 2
- Infection, sec. 2 (2) ... 1
- Injury, secs. 2 (2) 3 (a) ... 2
- Insurance carrier, sec. 2 (5) ... 1
- Occupational disease, sec. 2 (2) ... 1
- Parent, sec. 2 (15) ... 2
- Person, sec. 2 (1) ... 1
- Self-insurer, sec. 32 (a), (2) ... 13
- Sister, sec. 2 (14) ... 2
- State, sec. 2 (8) ... 1
- United States, sec. 2 (9) ... 1
- Wages, sec. 2 (13) ... 2
- Widow, sec. 2 (16) ... 2
- Widower, sec. 2 (17) ... 2

Dependency, when determined, sec. 9 (f) ... 7
(*See also* Beneficiaries.)

Depositions, sec. 24 ... 15

Deposits to secure payments, secs. 14 (l), 32 (a) (2) ... 11, 13

Deputy commissioners:
- Appointment of, secs. 39 (a), 40 (a) (b) ... 21, 22
- Attorney, not to appear as, sec. 40 (f) ... 22
- Attorneys' fees, sec. 28 (a) ... 18
- Awards, enforcement of, secs. 18, 21 (c) ... 12, 13, 14, 15
- Claims, contested, notice of, to, sec. 14 (d) ... 10
- Claims, hearings on, secs. 14 (h), 19, 23 ... 11, 13, 14, 15
- Claims received by, sec. 13 (a) ... 9
- Commutation of payments, sec. 14 (j) ... 11
- Compensation payments, fixing time for, sec. 14 (b), (e) ... 10
- Contempts before, sec. 27 (b) ... 18
- Death, notice of, to, sec. 12 ... 9
- Default of payments, sec. 18 ... 12, 13
- Deferred payments, excusing, sec. 14 (e) ... 10
- Definition of, sec. 2 (7) ... 1
- Duties, etc., of, sec. 40 (c)–(f) ... 22
- Employers' notices as to payments, sec. 14 (c), (g) ... 10, 11
- Failure to give notice, excusing, sec. 12 (d) ... 9
- Fees, attorneys', sec. 28 (a) ... 18
- Fees, etc., for medical services, sec. 7 (c) ... 4
- Final payments, notice of, sec. 14 (g) ... 11
- First payments, notice of, sec. 14 (c) ... 10
- Guardians, appointment of, secs. 8 (d) (3), 9 (b), 11 ... 6, 7, 8, 9
- Hearings, sec. 14 (h), 19, 23 ... 11, 13, 14, 15
- Incompetents, etc., guardians for. (*See* Guardians.)

| | Page |
|---|---|
| **Deputy commissioners**—Continued. | |
| Injuries, etc., reports of, secs. 7 (a), 12 (a), (c), 30 (a), (b) | 3, 4, 9, 17 |
| Insurance contracts, cancellation of, sec. 36 (b) | 20 |
| Investigations, etc., by, secs. 14 (h), 19 (c) | 11, 13 |
| Medical examinations, power to require, secs. 7 (b), 14 (h) | 4, 11 |
| Medical, etc., treatment, fees for, sec. 7 (c) | 4 |
| Medical treatment, reports of, sec. 7 (a) | 3, 4 |
| Notice, excusing failure of, sec. 12 (d) | 9 |
| Notice of injury or death, sec. 12 (a)–(c) | 9 |
| Offices to be maintained, sec. 40 (a), (d) | 21, 22 |
| Payments, fixing times of, sec. 14 (b) | 10 |
| Payments, employers' notices as to, sec. 14 (c), (g) | 10, 11 |
| Payments, security for, sec. 14 (l) | 11 |
| Physicians' fees, sec. 7 (c) | 4 |
| Physicians' reports, sec. 7 (a) | 3, 4 |
| Powers, quasi judicial, of, sec. 27 (a) | 16 |
| Procedure before, sec. 23 | 15 |
| Receipts for payments, inspection of, sec. 14 (l) | 11 |
| Records, transfer of, sec. 40 (e) | 22 |
| Removal, etc., of, sec. 40 (e) | 22 |
| Review of awards, sec. 22 | 15 |
| Security for payments, sec. 14 (l) | 11 |
| State officials, appointment, etc., of, sec. 40 (a) | 21, 22 |
| Stevedores' certificates, sec. 37 | 20 |
| Stoppage, suspension, etc., of payments, sec. 14 (c), (h) | 10, 11 |
| Third-party cases, election in, sec. 33 (a), (h) | 18, 19 |
| Time for payments, fixing, sec. 14 (b) | 10 |
| Transfer of claims for hearing, sec. 19, (g) | 13 |
| Transfer to other district, sec. 40 (c) | 22 |
| Traveling, etc., expenses, sec. 42 | 23 |
| United States, officials of, appointment of, sec. 40 (b) | 22 |
| **Disability:** | |
| Award for, after death, secs. 8 (d) (5), 19 (f) | 6, 13 |
| Definition of, sec. 2 (10) | 1 |
| Following second injury, sec. 8 (f) | 6 |
| Permanent partial, sec. 8 (c), (d) | 4–6 |
| Permanent total, sec. 8 (a) | 4 |
| Temporary partial, sec. 8 (e) | 6 |
| Temporary total, sec. 8 (b) | 4 |
| Temporary total, followed by permanent partial, sec. 8 (c) (22) | 5 |
| Vested interest in awards for, sec. 8 (d) | 5, 6 |
| **Disease, occupational, etc.,** sec. 2 (2) | 1 |
| **Disfigurement,** sec. 8 (c) (20) | 5 |
| **Dry docks, inclusion of,** sec. 2 (4) | 1 |
| **Earning capacity, reduced, as basis for compensation,** sec. 8 (c) (21) | 5 |
| **Earnings.** (*See* **Wages.**) | |
| **Ears, hearing, loss of,** sec. 8 (c) (13) | 5 |
| **Election to sue:** | |
| Employer's failure to insure, sec. 5 | 3 |
| Third-party liability, sec. 33 | 18, 19 |
| **Employee:** | |
| Contributions, etc., by, sec. 15 (a) | 11, 12 |
| Coverage, secs. 2 (3), (4), 3 (a) | 1, 2 |
| Definition of, sec. 2 (3) | 1 |
| Election to sue. (*See* **Election.**) | |
| False representations by, sec. 31 | 17 |
| Intoxication of, sec. 3 (b) | 2 |
| Medical, etc., treatment, may be procured by, when, sec. 7 (a) | 3 |
| Premiums, insurance, not to pay, sec. 15 (a) | 11, 12 |
| Receipts for compensation, sec. 14 (l) | 11 |
| Refusal of medical examination, sec. 19 (h) | 13, 14 |
| Waivers by, sec. 15 (b) | 12 |
| Willful intent of, to injure, sec. 3 (b) | 2 |
| **Employer:** | |
| Accepting contributions for premiums, sec. 15 | 11, 12 |
| Advance payments by, sec. 14 (k) | 11 |
| Assignment of rights to, in third-party cases, sec. 33 | 18, 19 |

Page

**Employer—Continued.**
- Bankruptcy or insolvency of, sec. 36 (a) ... 20
- Cancellation of insurance policies, notice of, sec. 36 (b) ... 20
- Default in payment by, sec. 18 ... 12, 13
- Definition, sec. 2 (4) ... 1
- Delayed payments by, sec. 14 (e), (f) ... 10, 11
- Deposits by, to secure payments, sec. 14 (i) ... 11
- Discharge of obligations, sec. 35 ... 20
- Failure of, to provide insurance, secs. 5, 38 ... 3, 20, 21
- Liability of, secs. 4 (a), 5 ... 3
- Medical, etc., aid by, sec. 7 (a) ... 3, 4
- Notice of compliance with act to be posted, sec. 34 ... 19
- Notice to, is notice to carrier, sec. 35 ... 20
- Preference of awards against assets of, sec. 17 ... 12
- Production of receipts for payments, sec. 14 (1) ... 11
- Receipt of notices of injury or death by, sec. 12 ... 9
- Records of injuries, etc., by, sec. 29 ... 17
- Reports of injuries, etc., by, sec. 30 ... 17
- Security for compensation payments by, sec. 32 ... 17, 18
- Self-insurers, sec. 32 (a) (2) ... 18
- Subrogation of, sec. 33 ... 18, 19
- Uninsured, liability of, sec. 5 ... 3

**Employments covered,** secs 2 (4), 3 ... 1, 2

**Evidence:**
- Common law, etc., rules not binding, sec. 23 (a) ... 15
- Declarations of deceased employees, sec. 23 (a) ... 15
- Depositions, sec. 24 ... 15
- Notice of injury or death, requirements as to, sec. 12 ... 9
- Presumptions in claim proceedings, sec. 20 ... 14
- Reports of employers not, sec. 30 (c) ... 17
- Stenographic reports of hearings, sec. 23 (b) ... 15
- Witnesses, provisions governing, sec. 24 ... 15

**Exclusiveness of remedy,** sec. 5 ... 3

**Eyes:**
- Binocular vision, loss of, sec. 8 (c) (16) ... 5
- Loss of both, sec. 8 (a) ... 4
- Loss of one, sec. 8 (c) (5) ... 4

**Facial disfigurement,** sec. 8 (c) (20) ... 5

**False statements,** sec. 31 ... 17

**Fault, liability without,** sec. 4 (b) ... 3

**Fees:**
- Approval, regulation, etc., of, secs. 7 (c), 28 (a) ... 4, 16
- Attorneys', etc., sec. 28 ... 16
- Medical, etc., sec. 7 (a) (c) ... 3, 4
- Unauthorized, sec. 28 (b) ... 16
- Witnesses, secs. 24, 25 ... 15

**Feet:**
- Amputation, sec. 8 (c) (15) ... 5
- Loss of both, sec. 8 (a) ... 4
- Loss of one, sec. 8 (c) (4) ... 4

**Fellow-service defense abrogated,** sec. 5 ... 3

**Fines, to special injury fund,** sec. 44 (c) (2) ... 22

**Fingers, compensation for,** sec. 8 (c) ... 4, 5

**Foreign dependents.** (*See* Aliens.)

**Forms.** (*See* Commission; Forms.)

**Funeral expenses:**
- Amount of, sec. 9 (a) ... 7
- As part of compensation, sec. 2 (12) ... 2

**Future payments:**
- Commutation. (*See* Compensation; Commutation.)
- Deposits to secure, sec. 14 (i) ... 11

**Geographical scope of act,** sec. 2 (8) (9) ... 1

**Grandchild, definition of,** sec. 2 (14) ... 2

**Grandchildren and grandparents, rights of,** sec. 9 (d) ... 7

**Gratuities:**
- As part of wages, sec. 2 (13) ... 2
- Unauthorized receipt of, for legal, etc., services, sec. 28 (b) ... 16

| | Page |
|---|---|
| Guardians for minors or incompetents, secs. 9 (b), 11, 13 (c), 33 (h) | 7, 8, 9, 10, 19 |
| Handicapped persons, rehabilitation, secs. 8 (g), 39 (c), 44 | 6, 21, 23 |
| Hands: | |
| Amputation of, sec. 8 (c) (15) | 5 |
| Loss of both, sec. 8 (s) | 4 |
| Loss of one, sec. 8 (c) (3) | 4 |
| Head disfigurement, sec. 8 (c) (20) | 5 |
| Healing time, sec. 8 (c) (22) | 5 |
| Hearing, loss of, sec. 8 (c) (13) | 5 |
| Hearings, secs. 14 (h), 19, 23 | 11, 13, 14, 15 |
| Hospital, etc., services, sec. 7 | 3, 4 |
| Husbands. (*See* Widowers.) | |
| Illegitimate children, sec. 2 (14) | 2 |
| Impaired earning capacity, compensation for, sec. 8 (c) (21) | 5 |
| Incompetents: | |
| Guardians for, secs. 11, 13 (c) | 8, 9, 10 |
| Limitations not to run against, sec. 13 (c) | 10 |
| Infection following injury, sec. 2 (2) | 1 |
| Injunction to suspend order, sec. 21 (b) | 14 |
| Injuries by third parties, sec. 33 | 18, 19 |
| Injury: | |
| Declaration of deceased employee as to, sec. 23 (a) | 15 |
| Definition of, secs. 2 (2), 3 (a) | 1, 2 |
| Notice of, sec. 12 | 9 |
| Presumptions as to, sec. 20 | 14 |
| Records, sec. 29 | 17 |
| Reports, sec. 30 | 17 |
| Study of means of prevention, sec. 41 | 22, 23 |
| Insolvency of employers, sec. 36 (a) | 20 |
| Insurance: | |
| Agreements by employees to pay premiums, sec. 15 (a) | 11, 12 |
| Cancellation of policies, sec. 36 (b) | 20 |
| Employer to post notice as to, sec. 34 | 19 |
| Failure of employer to provide, secs 5, 38 | 3, 20, 21 |
| Provisions of policies, sec. 36 | 20 |
| Requirement as to, sec. 32 | 17, 18 |
| Stevedoring firms to show certificates, sec. 37 | 20 |
| Who may carry own. (*See* Self-insurers.) | |
| Insurance carriers. (*See* Carriers.) | |
| Intentional injuries: | |
| As bar to compensation, sec 3 (b) | 2 |
| Presumptions as to, sec. 20 (d) | 14 |
| Intoxication: | |
| As bar to compensation, sec 3 (b) | 2 |
| Presumptions as to, sec. 20 (c) | 14 |
| Judgments in district courts, sec. 18 | 12, 13 |
| Judicial action. (*See* Actions at law.) | |
| Jurisdiction of employer as jurisdiction of carrier, sec. 35 | 20 |
| Knowledge of employer as knowledge of carrier, sec. 35 | 20 |
| Legal representatives: | |
| Election by, if no insurance, sec. 5 | 3 |
| In third-party cases, sec. 33 | 18, 19 |
| Liability to, limited, sec. 5 | 3 |
| Legal services, soliciting employment of, sec. 28 (b) | 16 |
| (*See also* Attorney's fees.) | |
| Legs: | |
| Amputation of, sec. 8 (c) (15) | 5 |
| Loss of both, sec. 8 (s) | 4 |
| Loss of one, sec. 8 (c) (2) | 4 |
| Liability of employer. (*See* Employer.) | |
| Liens: | |
| For attorneys' fees, sec. 28 (a) | 16 |
| For compensation, preference of, sec. 17 | 12 |
| Limitations suspended, when, secs. 13 (c) (d), 49 | 10, 25 |
| Limited liability laws inapplicable, sec. 48 | 25 |
| Loss of use of member, sec. 8 (c) (18) (19) | 5 |

Page

Lump sums. (*See* Compensation; Commutation.)
Marine protection and indemnity mutual insurance companies, sec. 32 (b) ..... 18
Maritime employments, inclusion of, secs. 2 (4), 3 (a) ..... 1, 2
Marriage of widow or widower, sec. 9 (b) ..... 7
Married children, wholly dependent, sec. 2 (14) ..... 2
Maximum total benefit, sec. 14 (m) ..... 11
Medical examinations:
  Provisions for, secs. 7 (b), 14 (h), 19 (h) ..... 4, 11, 13, 14
  Refusal of, sec. 19 (h) ..... 13, 14
Medical, etc., services:
  Employee may procure, when, sec. 7 (a) ..... 3, 4
  Employer to furnish, sec. 7 (a) ..... 3, 4
  Fees for, sec. 7 (a), (c) ..... 3, 4
  Prevailing rates for, sec. 7 (c) ..... 4
  Reports of, by physician, sec. 7 (a) ..... 3, 4
  Validity of claims for, sec. 7 (a) ..... 3, 4
Minors:
  Guardians for, secs. 9 (b), 11, 33 (h) ..... 7, 8, 9, 10
  In third party cases, sec. 33 (h) ..... 19
  Limitations against, sec. 13 (c) ..... 10
  Wages of, anticipated [illegible]ase in, sec. 10 (e) ..... 9
  (*See also* Child.)
Misdemeanors. (*See* Penalties.)
Navigable waters, employment on, secs. 2 (4), 3 (a) ..... 1, 2
Negligence, contributory, may not be pleaded, when, sec. 5 ..... 5
Negligence of third party causing injury, sec. 33 ..... 18, 19
Notices:
  Cancellation of insurance policies, sec. 36 (b) ..... 20
  Claim for compensation, secs. 13, 19 (a) (b) ..... 9, 10, 13
  Controversies, sec. 14 (d) ..... 10
  Decisions, sec. 19 (e) ..... 13
  Hearings, sec. 19 (c) ..... 13
  Initial and final payments, sec. 14 (c) (g) ..... 10, 11
  Injury or death, failure to give, sec. 12 (d) ..... 9
  Mailing as service, sec. 12 (c) ..... 9
  Physicians to give what, sec. 7 (a) ..... 3, 4
  Presumptions as to, sec. 20 (b) ..... 14
  Required, secs. 12, 30 ..... 9, 17
  Security of compensation by employer, sec. 34 ..... 19
  To employer binding on carrier, sec. 35 ..... 20
Occupational diseases, sec. 2 (2) ..... 1
Parents as beneficiaries, secs. 2 (15), 9 (d), (g) ..... 2, 7, 8
Partial disability. (*See* Disability.)
Penalties:
  Collection of, sec. 44 (g) ..... 26
  For deducting premiums, etc., from wages of employees, sec. 15 (a) ..... 11, 12
  For delay in payment of compensation, sec. 14 (e), (f) ..... 10, 11
  For employment of stevedore without certificate, sec. 37 ..... 20
  For failure of employer to report final payments, etc, sec. 14 (g) ..... 11
  For failure of employer to report injuries, etc., sec. 30 (e) ..... 17
  For failure of employer to secure payment of compensation, sec. 38 ..... 20, 21
  For failure of witnesses to appear, etc, sec. 27 (b) ..... 16
  For misrepresentations by claimants, sec. 31 ..... 17
  For soliciting business as attorney, etc, sec. 28 (b) ..... 16
  Payment of certain, into special fund, sec. 44 (c) (2) ..... 25
Person, definition of, sec. 2 (1) ..... 1
Phalanges of finger or toe, compensation for, sec. 8 (c) (14) ..... 5
Physical examination. (*See* Medical examination).
Physicians:
  Designation of, by commission, sec. 19 (b) ..... 13, 14
  Employee may procure, when, sec. 7 (a) ..... 3, 4
  Employer to provide, sec. 7 (a) ..... 3, 4
  Estimates deemed not impartial, sec. 7 (b) ..... 4
  Examinations by, secs. 7 (b), 14 (h), 19 (h) ..... 4, 11, 13, 14
  Fees of, sec. 7 (a)–(c) ..... 3, 4
  Reports by, sec. 7 (a) ..... 3, 4
Policies of insurance. (*See* Insurance.)

| | Page |
|---|---|
| Posthumous children, sec. 2 (14) | 3 |
| Premiums, deductions for, forbidden, sec. 15 (a) | 11, 12 |
| Present value, determination of, sec. 14 (j) | 11 |
| (*See also* Compensation: Commutation.) | |
| Presumptions in claim proceedings, sec. 20 | 14 |
| Previous disability, sec. 8 (f) | 6 |
| Procedure, secs. 19, 23, 27 | 13, 14, 15, 16 |
| Prosthetic appliances may be furnished, sec. 29 (c) | 21 |
| Provisions of act severable, sec. 50 | 25 |
| Public employees, exclusion of, sec. 3 (a) (2) | 2 |
| Public hearings directed, sec. 23 (b) | 15 |
| Receipts to be given for compensation payments, sec. 14 (i) | 11 |
| Records of injuries to be kept by employers, sec. 29 | 17 |
| Rehabilitation: | |
| Additional compensation during, sec. 8 (g) | 9 |
| Cooperation in, sec. 39 (c) | 21 |
| Fund for, sec. 44 | 23 |
| Reports of injuries, etc., to be made by employers, sec 30 | 17 |
| Review of awards, secs. 8 (c) (21), 21, 22 | 5, 14, 15 |
| Rules and regulations, duty of commission as to, sec. 39 (a) | 21 |
| Safety provisions, study, etc., of, sec. 41 | 22, 23 |
| Schedule of amputations, etc., sec. 8 (c) | 4, 5 |
| Second injuries: | |
| Compensation for, sec. 8 (f) | 6 |
| Fund for, sec. 44 | 23, 24 |
| Payments limited by amount in fund, sec. 44 (e) | 24 |
| Security, special, deputy may require, sec. 14 (i) | 11 |
| (*See also* Insurance.) | |
| Self-insurers: | |
| Authorization, etc., of, sec. 32 | 17, 18 |
| Deposits by, sec. 32 (a) (2) | 18 |
| Severability of provisions of act, sec. 50 | 25 |
| Sisters and brothers as beneficiaries, secs. 2 (14), 9 (d) | 3, 7 |
| Small vessels; exclusion of, secs. 2 (3), 3 (a) (1) | 1, 2 |
| Special fund, second injury and rehabilitation, sec. 44 | 23, 24 |
| State officers and employees, exclusion of, sec. 3 (a) (2) | 2 |
| Step-children and step-parents as beneficiaries, secs. 2 (14) (15), 9 (b)–(d) | 3, 7 |
| Stevedoring firms to have certificates, sec. 37 | 20 |
| Subcontractors, sec. 4 (a) | 3 |
| Subpoenas, power of deputy to issue, sec. 27 | 16 |
| Subrogation in third-party cases, sec. 33 (b)–(e) | 18, 19 |
| Suits as stay of limitation, sec. 13 (d) | 10 |
| (*See also* Action at law.) | |
| Suits for damages, sec. 5 | 3 |
| Suits, unreasonable, costs in, sec. 26 | 16 |
| Temporary disability. (*See* Disability.) | |
| Third-party liability: | |
| Compromises, sec. 33 (e), (g) | 19 |
| Election of remedies, sec. 33 (a), (b) | 18 |
| Employer's liability for balance, sec. 33 (f), (g) | 18 |
| Procedure, sec. 33 | 18, 19 |
| Recoveries, distribution, etc., of, sec. 33 (e) | 19 |
| Thumb, loss of, sec. 8 (c), (6) | 4 |
| Time: | |
| For filing claims, secs. 13, 19 (a) | 9, 10, 13 |
| For giving notice of injury or death, sec. 12 (a) | 9 |
| For notice of filing of claim, sec. 19 (b) | 13 |
| For notice of hearing, sec. 19 (c) | 13 |
| For order to become final, sec. 21 (a) | 14 |
| For rendering decision as to award, sec. 19 (c) | 13 |
| For review or modification of awards, sec. 22 | 15 |
| Tips as part of earnings, sec. 2 (13) | 3 |
| Title of Act, sec. 1 | 1 |
| Toes, loss of, sec. 8 (c) (8), (11) | 4 |
| Total disability. (*See* Disability.) | |
| Unconstitutionality of part of Act, secs. 49, 50 | 25 |

Vested interest, what awards are, sec. 8 (d)
Vision. (See Eyes.)
Vocational rehabilitation. (See Rehabilitation.)
Wages:
As basis of awards, secs. 8, 9
Computation of, sec. 10
Definition of, sec. 2 (13)
Waiting time, sec. 6 (a)
Waivers void, sec. 15 (b)
Widowers as beneficiaries, secs. 2 (17), 8 (d), 9 (b)
Widows as beneficiaries, secs. 2 (16), 8 (d), 9 (b), (g)
Willful acts, secs. 2 (2), 3 (b), 20 (d)
Witnesses:
Attendance of, sec. 24
Fees for, sec. 25
Refusal to appear, etc., sec. 27 (b)

O